

**EIGHT-HOUR LAW; HEARINGS BEFORE
THE SUBCOMMITTEE OF THE COMMITTEE
ON EDUCATION AND LABOR UNITED
STATES SENATE, SIXTY-SECOND
CONGRESS ON H. R. 9061; PARTS 1-4**

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Eight-Hour Law; Hearings Before the Subcommittee of the Committee on Education and Labor
United States Senate, Sixty-Second Congress on H. R. 9061; Parts 1-4 by Various

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EIGHT-HOUR LAW

HEARINGS

BEFORE THE

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SUBCOMMITTEE OF THE
COMMITTEE ON EDUCATION AND LABOR
UNITED STATES SENATE

SIXTY-SECOND CONGRESS

ON

H. R. 9061

AN ACT LIMITING THE HOURS OF DAILY SERVICE OF LABORERS AND
MECHANICS EMPLOYED UPON WORK DONE FOR THE UNITED
STATES, OR FOR ANY TERRITORY, OR FOR THE DIS-
TRICT OF COLUMBIA, AND FOR OTHER PURPOSES

TUESDAY, JANUARY 9, 1912

Printed for the use of the Committee on Education and Labor

WASHINGTON
GOVERNMENT PRINTING OFFICE
1912

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COMMITTEE ON EDUCATION AND LABOR.

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BOIES PENROSE, of Pennsylvania. ISIDOR BAYNER, of Maryland.
HENRY A. DE PONT, of Delaware. JOHN H. BANKHEAD, of Alabama.
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EARL VENABLE, *Clerk.*

2. 7. 1912

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1912

EIGHT-HOUR LAW.

TUESDAY, JANUARY 9, 1912.

UNITED STATES SENATE,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D. C.

The committee met at 10 o'clock a. m.

Present: Senators Borah (chairman), du Pont, Page, and McLean. Daniel Davenport, of Bridgeport, Conn., representing the American Antiboycott Association; James A. Emery, counsel of the National Association of Manufacturers; and James H. Hayden, attorney for the Carnegie Steel Co. and the William Cramp & Sons Ship and Engine Building Co., appeared.

The CHAIRMAN (Senator Borah). Gentlemen, I think we will proceed with the hearing. It is presumed that those members of the committee who are not present read what is said. It is likely that other members will drop in directly. The committee has before it this morning House bill 9061, known as the eight-hour bill. I understand that the gentlemen present desire to be heard upon the matter. Judge Davenport, do you desire to proceed now?

Mr. DAVENPORT. I am willing to do so, although I am not appalled by the size of the audience. I guess, for the purposes of what I want to say, I may as well go on and put it in the record.

The CHAIRMAN. We will proceed with the hearing. It is going to be taken down and will be printed, and the committee will have the benefit of it.

STATEMENT OF DANIEL DAVENPORT, REPRESENTING THE AMERICAN ANTIBOYCOTT ASSOCIATION.

Mr. DAVENPORT. Mr. Chairman and gentlemen of the committee: We are now in a late stage of the history of attempts at legislation of a character such as is proposed in the bill now before the committee. Of course, the drafting of a law which so intimately affects the administration of the affairs of the United States Government in all its vast transactions is a very practical matter, for it affects not only the interest of the Government, but also the interests of those who have occasion, in carrying on business, to deal with the Government.

In order that this committee may be apprised of the real situation of the law on the subject, I want to lay before the committee the existing law and then to acquaint it with the different measures which in former Congresses have been proposed from time to time and been very carefully considered by this committee and the Labor

Committee of the other House in past years, and then address some observations on the provisions of this particular bill.

Chapter 352 of the Acts of Congress for the year 1892 reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

SEC. 2. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

SEC. 3. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act.

I will say that the Supreme Court of the United States has been called upon to construe that act and has held the same to be constitutional in the respects presented to the court by the cases that came before it.

Within the last session or two of Congress, in the appropriations made for the building of certain vessels of war for the Government, a provision has been inserted in the appropriation acts in regard to making contracts relating to those subjects. But those expired, as I understand it.

The CHAIRMAN. With the particular appropriation?

Mr. DAVENPORT. With the particular appropriation, but on that I am not advised sufficiently. However, the statute which I read to you is an existing statute of the United States, and I would call your attention to the fact that the bill now pending before the committee contemplates that that shall still remain in force. The last sentence of the proposed bill, on page 4, is as follows:

Nothing in this act shall be construed to repeal or modify the act entitled "An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia," being chapter three hundred and fifty-two of the laws of the Fifty-second Congress, approved August first, eighteen hundred and ninety-two, or to apply to work done under contracts made prior to the passage of this act.

So the committee is sufficiently apprised of the provisions of the existing law and of the intention on the part of the advocates of this bill to keep the people who do business with the United States Government, not only under the existing law, with its severe and savage penalties, but also to extend their liability, so that if, wittingly or unwittingly, they violate any of the provisions as applied to them,

they shall be subjected further to the ruinous provisions of this new enactment also.

Senator PAGE. To get at the point at issue, let me ask in what particular respect the bill before us differs from the existing law?

Mr. DAVENPORT. This is a bill which in general terms provides that any man who does work for the Government, which is of the class of work covered by the provisions of the bill, must make a contract, and in that contract there must be inserted a provision that if either he or any subcontractor of his, or subcontractor of that subcontractor to the remotest degree permits any man—not requires, but permits, any man—to work more than eight hours in any one calendar day upon any of that work, he shall forfeit for each man so employed, whether by him or his subcontractors or their subcontractors, and whether intentionally or otherwise, the sum of \$5 for every such man, if he works 10 minutes overtime. And those penalties are to be withheld by the Government from the payments stipulated in the contract. That is the general character of this bill.

The existing law which I read provides only that any contractor or subcontractor who permits any person to work on the public buildings and such work more than eight hours shall be subject to a criminal prosecution. Of course if he does it intentionally he comes within the provisions of the law, but if unintentionally he does not.

Senator PAGE. The chief purpose of the bill before us, then, is to extend the law to subcontractors and subcontractors of subcontractors?

Mr. DAVENPORT. Not only does the bill cover those I speak of, but anybody who does any work in the performance of a contract for the furnishing of articles that are covered by the bill comes under its provisions.

The CHAIRMAN. He must be either a contractor or a subcontractor?

Mr. DAVENPORT. Surely. But take a concrete illustration. Suppose the Government lets a contract for the building of a battleship to some shipbuilding firm. That contractor naturally does not do all the work. He has to make subcontracts. He contracts for some work at one factory and some at another, and further, it is often necessary for that subcontractor himself to make subcontracts with others.

Now, the scheme of this bill is that the firm which makes the contract with the Government shall be responsible to the Government in enormous penalties, to be taken out of his contract price arbitrarily by the action of Government officers, for each person who works more than eight hours a day either for him or for his subcontractor or a subcontractor of that subcontractor, and so on down the line. That is in answer to the question of the Senator.

Senator PAGE. If I may prolong the inquiry just a little, what do you say to this: If a subcontractor who puts a job of steam fitting into a vessel buys his steam fittings of some steam-fitting concern, is he compelled to go to the third party and see that what he purchases from him has been made under the eight-hour law?

Mr. DAVENPORT. If it is of the class of work that is comprised within the provisions of this bill. But in attempting to get around the enormous difficulties in the way of such a scheme that have been pointed out time and time again to the committees of both Houses (and which no committee of either House yet has ever ignored until

the present committee of the House did so), they have introduced in it provisions so obscure and so impossible to be applied and construed as to make it of such a character that it would practically put the United States Government out of business in the administration of its vast affairs; for no man not crazy, no man outside of bedlam, would ever undertake to do business with the Government under provisions of this character.

Just imagine a case. Suppose the Cramps Shipbuilding Co. had a contract, in the performance of which it was necessary for it to subcontract with some person to do work for it which comes within the provisions of the bill. It might be a five-thousand dollar contract; it might be only a thousand-dollar contract. Suppose the subcontractor permitted, say, 500 men to work half an hour more than eight hours in a day on two successive days. Whether he did it intentionally or unintentionally, the penalties of the Cramps for that thing would be \$5,000, while the subcontractor's bill against the Cramps would be only \$1,000.

In this irregular fashion I am trying to point out to you some of the consequences of this proposed legislation. I want now to take the matter up a little more systematically; but right on that point, while we are talking about it, I will state that this bill passed the House of Representatives unanimously, and the amazing thing, Mr. Chairman, is that the House of Representatives ever permitted such a bill to pass at all. I want to call your attention to the circumstances under which it was passed.

There are three parties in the House at the present time. One of them is led by James R. Mann, of Chicago. Another is led by Mr. Berger. He is at present in the minority. The third party is led by Mr. Underwood, but he did not seem to be in the House that day. As showing the circumstances under which this bill upon this great subject comes before you, who are charged with the responsibility of framing legislation for the administration of the business of this great Government, I want to call your attention to the debate which took place upon it at the time it passed the House.

The man, as I consider, who discussed the matter most intelligently was Mr. Berger, and I quote from page 342 of the Congressional Record of December 14, 1911. Mr. Berger said:

Mr. Speaker and gentlemen, I must congratulate my Democratic friends on the way they are playing politics. For the first time in 50 years they are playing good politics, but it is playing politics. Day before yesterday they tried to rake in the soldiers' vote, yesterday they tried to get the Hebrew vote, and to-day they are trying to get the labor vote. [Laughter.]

I shall vote for this bill with pleasure, although, as I say, in principle I am for a six-hour working day. I do not know whether this bill is going to hold water in the courts. I hope it will. The gentleman from New Jersey [Mr. Hughes], who is a bright lawyer, a well-meaning man, and a fine fellow all around, was engaged in its preparation. [Applause.]

I have not prepared a speech because I did not know this bill was coming up to-day. I have been a newspaper man for a good many years, and I believe I understand the English language. However, when I read this bill I was not quite clear as to what some of its provisions mean. I hope the committee will be willing to accept amendments, especially some of the amendments suggested by the gentleman from Illinois [Mr. MANN].

I know this bill is going to have hard sledding; not in the House and not in the Senate. It is going to pass both Houses almost unanimously, and I have no doubt the President will sign it as quickly as he possibly can. But the great

question is how it will fare in the courts. When we have a Socialist Supreme Court then labor measures and all other laws passed will be safe, but I am quite sure we shall not then need an eight-hour law. [Applause.]

That seemed to be about all that occurred to Mr. Berger, the representative of his party, to say upon the subject of the bill.

The next man who took a hand in it was Mr. Mann, the leader of the great Republican party in the House, though now in the minority, a gentleman who assumes the responsibility of being its leader and of presenting the views of his party upon these questions. I quote from the Record:

The SPEAKER. The gentleman from Illinois [Mr. Mann] is recognized for one hour.

Mr. MANN. Which time I shall not consume. [Applause.] I take the floor primarily for the purpose of offering some amendments to the bill, which amendments I think will not be objected to. Just one word. I was a member of the city council of Chicago a good many years ago. I put through an ordinance which seemed to me to be the proper way to reach it, providing that all contracts entered into should contain a provision for eight hours work; a provision very similar to section 1 of this bill. The gentleman from Wisconsin [Mr. Berger] need not fear at all the construction of the courts on section 1. We have a right to say that we will enter into no contract without a provision in it that the contractor shall not employ any person more than eight hours, and with a penalty in it, not penal in its nature, but a penalty made a part of the contract, to be taken out of the contract if the contractor does not obey its terms.

I have a habit of working in a garden occasionally, and sometimes when I go home a little fresh from relaxation from that character of work, I may feel inclined to labor more than 8 hours in a day; but after handling a spade or a hoe for a while I come to the conclusion that 8 hours are long enough for any man to work in 24 hours, at ordinary hard labor. [Applause.] If I had my way about it, I would forbid any person employing labor for more than 8 hours in 24. We will gradually come to that.

That is about all it occurred to Mr. Mann to say by way of discussion of this measure.

The gentleman who represented the other of the three parties, the Democrats, Mr. Wilson of Pennsylvania, addressed the House in support of this measure. He undertook to explain what it was for, what it accomplished, and what it meant. I want to show what that gentleman said on the subject. I read from page 338 of the Record of December 14, 1911. I ask the committee to bear in mind when I read this what the provisions of this bill really are, in order that they may appreciate what Mr. Wilson of Pennsylvania, who was advocating it and was the chairman of the House Committee on Labor, which reported it, understood it to mean:

Mr. Wilson of Pennsylvania. Mr. Speaker, the purpose of this bill is to require that all contracts made, to which the United States, any Territory, or the District of Columbia is a party, shall contain a proviso or requirement of an eight-hour workday for laborers and mechanics. In section 2 it provides that nothing in this act shall apply to contracts for transportation by land or water, or for the transmission of intelligence, or for such materials or articles as may usually be bought in the open market, except armor and armor plate, whether made to conform to particular specifications or not.

Under the act of 1892 an eight-hour workday is made to apply to all work done on public works of the United States, and the interpretation which has been placed upon the language used in the act of 1892 is entirely different from that which was intended by the lawmaking body in this respect, that it was intended to apply to all work performed for the United States, whether done through contractors or subcontractors, whether the work was performed on property owned by the United States or not; and the interpretation of the Attorney General placed a different construction upon it, so that it applied only to that part of the public work which was performed on property of the United