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This thesis is a history of the sixteen years of political activity which led to the passage of the state's first workmen's compensation law. The paper begins in 1913 with the introduction of the first compensation bill and concludes with the passage of the law in March of 1929. The paper seeks to answer why North Carolina took sixteen years to pass such an important piece of social legislation, and why North Carolina was slower in passing the law than some other Southern states that were considered less progressive in these matters.

The major source of information was the newspapers of the period, particularly labor's Raleigh Union Herald. This was augmented by reports from the North Carolina Department of Labor and the Commissioner of Insurance. The issue was placed in proper perspective by articles and books on the subjects of labor history and social legislation.

The study concludes that the major delay in passage of the law did not derive from any opposition to the theory of workmen's compensation or to any organized industrial opposition. The delay was caused by a balance of power in the legislature. The growing labor unions of North Carolina, aided by academic reformers and enlightened government officials, were able to prevent the passage of a low-paying compensation law until economic conditions forced a compromise solution. All of the bills introduced in the North Carolina legislature were equal or superior to those in other Southern states.

Chapters on the theory and practice of workmen's compensation and the history of this part of social legislation are included in the

thesis. There is also a chapter giving the relevant historical information and economic background in North Carolina.

TOWARD WORKMEN'S COMPENSATION IN NORTH CAROLINA, 1913--1929

by

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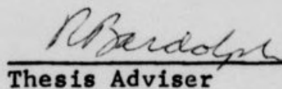

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APPROVAL SHEET

This thesis has been approved by the following committee of the Faculty of the Graduate School at The University of North Carolina at Greensboro.

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To Dr. Richard Bardolph this writer wishes to acknowledge the guidance that he has provided in the writing of this thesis and in mapping more clearly for me Clio's realm. To Dr. Betty C. Clutts goes the credit for directing me to the topic of labor history. The advice and comment of Dr. Franklin Parker and Dr. Allen W. Trelease will long be cherished. Lastly, recognition is made of the numerous people at The University of North Carolina at Greensboro who have created a stimulating academic environment.

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INTRODUCTION

North Carolina is famous among the Southern states for its progressive attitudes. That North Carolina was the forty-fourth state to pass a workmen's compensation law therefore seems wholly inconsistent with the social progress that stamped North Carolina as the "Wisconsin of the South" in the early twentieth century.

By the end of 1917 thirty-eight states had passed workmen's compensation laws. Alabama, Louisiana, Tennessee, Texas, and Virginia had the statute by 1921. North Carolina's passed on March 7, 1929. Why did North Carolina wait so long to pass such an essential part of social and labor legislation?

This thesis hopes to answer that question. It begins with a study of the theory of this sort of legislation and its enactment in Europe and the United States. Then comes a description and analysis of workmen's compensation laws. This is followed by a short survey of economic and social factors that may have influenced the law and its delay.

A study of North Carolina's efforts to pass workmen's compensation properly begins in 1913 when the first bill bearing the name was introduced. Thereafter, this study centers around each session of the legislature. There was, in fact, little or no discussion of the issue elsewhere; all efforts, arguments, and discussions were concentrated on the legislative sessions.

The major source of information has been the little-known newspaper of organized labor, the Raleigh Union Herald. This paper provided detailed coverage of the subject because of the obvious concern of organized labor for passage of the law. The major North Carolina newspapers of the time supplement this material. The irrelevance and esoteric nature of the subject precluded attention to the subject on the part of papers of a more local orientation. The reports of the Department of Labor and Printing provided valuable information. Manuscripts at the state archives, particularly those of the North Carolina Conference for Social Service, were helpful.

The idea for the thesis came from a study of John R. Commons, which led in turn to a study of the American Association for Labor Legislation (AALL), of which Commons was the titular head. The cause célèbre of the AALL was workmen's compensation. The following quotation from J. Maynard Keech's book, Workmen's Compensation in North Carolina, 1929-1940, finally led to the formulation of the exact topic of the thesis:

> Before 1929 little progress had been made in North Carolina in the field of labor legislation; since that date there has been an expanding program. The passage in that year of a workmen's compensation act marked the turning point in the emphasis upon labor legislation in the state; yet the history of its passage has never been recorded.[1]

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[1] J. Maynard Keech, Workmen's Compensation in North Carolina, 1929-1940 (Durham: Duke University Press, 1942), p. v.

CHAPTER I

WORKMEN'S COMPENSATION--THE THEORY

Workmen's compensation insurance evolved from the universal observation that the common law system was ineffective in dealing with industrial accidents. Common law had begun to establish precedents on labor accidents as early as the Fourteenth Century, and by 1850 all of the major issues of liability had been decided. A workman could collect damages for an industrial accident if the employer had clearly failed to provide safe equipment, a safe place to work, proper safety rules, or fellow servants capable of safe work. But against these possible shortcomings the employer had an almost ironclad set of defenses. The plaintiff could not collect damages if he had in any way brought the accident about through "contributory negligence" or if he had "assumed the risk" of accidents when accepting the job. The most devastating defense, however, was the "fellow servant rule" stated first by Lord Abinger in Priestly v. Fowler. To hold the employer responsible for injuries to one employee caused by another was "absurd."[1] Accidents resulting in death were not compensable and the burden of proof was on the plaintiff.

The complete set of English common law rulings on industrial

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[1]Harry Weiss, "Workmen's Compensation," in John R. Commons and others, History of Labor in the United States (4 vols.; New York: Macmillan Company, 1935), III, 565.

accidents was adopted by the American courts beginning with the first recorded case in 1842. This decision said in part:

> The general rule, resulting from considerations as well of justice as of policy, is that he who engages in the employment of another for the performance of specified duties and services, for compensation, takes upon himself the natural and ordinary risk and perils incident to the performance of such services, and in legal presumption the compensation is adjusted accordingly. And we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment. These are perils which the servant is as likely to know, and against which he can as effectually guard, as the master. They are perils incident to the service, and which can be as distinctly foreseen and provided for in the rate of compensation as any other.[2]

Other European countries had reached the same conclusions with the exception of the "fellow servant rule," which the United States and England used exclusively.

The common law is an adversary system. It requires a willful wrong on one side and innocence on the other. A member of the bar is generally required to guide the case through the legal maze. For the industrial worker this meant overcrowded and unsympathetic courts that provided relief in less than twelve per cent of the cases. Lawyers, hired on a contingency-fee basis, received from twenty to fifty per cent of the judgment. Appeals and retrials meant a long time from injury to possible recovery during which the injured worker and his family were left to their own resources. The disaster that struck the

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[2]Farwell v. Boston and Worcester R. R. Corp., 38 Am. Decis. 339 (1842), quoted in Ralph H. Blanchard, Workmen's Compensation in the United States (London: King & Sons, Ltd. for the International Labour Office of the League of Nations, 1926), p. 8.

worker was recalled by John Dos Passos:

> Everything would have gone right if his father hadn't slipped on the ice on the station steps one January morning in Johnny's sophomore year and broken his hip. He was taken to the hospital and one complication after another ensued. A little shyster lawyer, Ike Goldberg's father, in fact, went to see Moorehouse, who lay with his leg in the air . . . and induced him to sue the railroad for a hundred thousand dollars under the employers' liability law. The railroad lawyers got up witnesses to prove that Moorehouse had been drinking . . . so by midsummer he hobbled out of hospital on crutches, without a job and without any compensation. That was the end of Johnny's college education. The incident left in his mind a lasting bitterness against drink and against his father.[3]

As worker rights grew, the employer began to see a negative side to the common law. He too was required to hire lawyers and to lose time in court both for himself and for employees whom he might call as witnesses. This not only cost production time but produced ill feelings and low morale among his workers. Although court rulings against the employer were rare, awards when given could be enormous.

The employer was also confronted with an ever increasing number of employers' liability laws which restricted in some way the employer's defenses in a legal suit. In the United States, first in Georgia in 1856 and Iowa in 1862, legislatures passed laws to prevent the contracting out of liability, to extend the right of suit in death cases, and to abrogate or modify the three defenses. The first employers' liability laws were for railroad workers and reflected the anti-railroad feeling of the time. By 1908 the courts had invalidated

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[3]John Dos Passos, The 42nd Parallel (New York: Washington Square Press, Inc., 1961), p. 199.

contracts which compelled the employee to waive his right to suit for injuries. Forty states had passed laws to extend liability in instances when the injury resulted in death. Laws further removed superior positions, such as that of foreman, from the definition of "fellow servant." The "fellow servant" rule was abolished for all railroad employees in sixteen states. Most states placed the burden of proof on the defendant.[4]

New solutions were sought not only because the entire process was unfair but because it was slow, ineffective and illogical. The whole theory of individual fault collapsed under the steadily increasing pressure of industrial accidents. E. H. Downey, an expert on workmen's compensation, said of the problem:

> Broadly considered, the injuries which so arise in the course of employment are nobody's "fault," in a personal sense--Workmen do not intend suicide nor do employers desire the death or maiming of employees. . . . Humanly speaking . . . work injuries . . . are attributable to inherent hazards of industry.[5]

All of industrial society was at fault and in the late Nineteenth Century Europe began to place the responsibility where it belonged. Bismarck, in his continuing program of worker appeasement as a means of combatting the appeal of socialism, enacted the first true workmen's compensation law in 1884. This legislation required all employers to contribute to a state insurance fund that paid a fixed amount to injured workers regardless of fault. Austria followed in the next

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[4]Weiss, "Workmen's Compensation," pp. 567-569.

[5]E. H. Downey, Workmen's Compensation (New York: Macmillan Co., 1924), p. 8.

year. Norway, Finland, France, Denmark, and Great Britain all made the move by 1900; and Spain, The Netherlands, Sweden, Belgium, Russia, Italy, and Hungary passed laws from 1901 to 1910.[6]

In the United States the academic community was the first to respond to the problem. The famous Russell Sage Foundation survey of Pittsburg workers, and, in particular, the study by Crystal Eastman, _Work Accidents and the Law_, received wide public attention.

Eastman's survey was taken in an area of 250,000 wage earners, of which 70,000 were steel workers, 50,000 railroad employees, and 20,000 miners--three of the most accident-prone groups. From July 1, 1906, until June 30, 1970, 526 fatal injuries were recorded; 391 of these in the three highest groups. During three months of the same year, hospital records indicated 509 non-fatal accidents. But Eastman's greatest influence came not from the staggering numbers but from the detailed study of causes, which showed that only twenty-one per cent of the accidents could be blamed on employee carelessness.

Eastman's statistics gave support to workmen's compensation theory, but it was the descriptions of accidents' effect on people that made many see the need for immediate action. Indicative of the racial attitude of the time, she first explained that the people suffering from work accidents were not just "wops" or "hunkies" but Americans of Anglo-Saxon origin. Next she showed that of the work fatalities, eighty-four per cent involved men under forty, and sixty

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[6]Barbara N. Armstrong, "Workmen's Compensation," _Encyclopaedia of the Social Sciences_, XV, 492.

per cent men under thirty. Out of 235 families of deceased workers, 65 received $100 or less in compensation, 80 families got from $101 to $2000 and only 20 families were paid over $2000 for the loss of their provider. Thus the cost of accidents fell almost entirely on the worker and his family, and rarely was a family able to hold its pre-accident standard of living.[7]

Academic interest in labor legislation centered in the American Association for Labor Legislation, brainchild of Richard T. Ely, professor of political economy at the University of Wisconsin. A similar organization had existed in Europe for ten years. The American group formed in 1906 with Ely as the honorary president, but the major work of organizing the AALL and distributing its information went to his cohort at Madison, John R. Commons. In 1910 Commons gave John B. Andrews, another Madisonian, control of the organization, when offices were transferred to New York City in order for the organization to be closer to the center of industrial activity.

Workmen's compensation and the related study of safety provisions consumed the efforts of the AALL during its early years. By 1925 most of its efforts were directed toward unemployment insurance, social security and minimum wage and hour laws. The organization was extremely effective in providing information and model laws to state legislators, and it also published a journal, American Labor Legislation Review.

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[7] Roy Lubove, "Workmen's Compensation and the Prerogatives of Voluntarism," Labor History, VIII (Fall 1967), 255-258.

The success of the AALL is attributable to John R. Commons, who had a large and devoted following in both academic and government circles. Not the least of Commons' achievements was the industrial commission. The Commons formula of equal numbers from labor, capital, and the general public was most successful in administering any industrial law and provided a widely approved and greatly needed alternative to judicial administration.

Business gave its support to workmen's compensation from purely economic considerations. As the number of employers' liability laws grew, juries, made up more and more of fellow workmen, made higher and higher awards, often $25,000 or greater. Few businesses could afford one lost case, much less the inefficiency produced by the uncertainty of awards.

Before workmen's compensation, management protected itself by high-premium employers' liability insurance. This insurance appeared in the United States in the 1880's. Premium receipts totaled $200,000 in 1887, but had risen to over $35 million by 1912.[8] E. H. Downey found that for the ten largest employers' liability insurers, only $28 of every $100 paid in premiums went to the injured worker. Management also believed that the tactics used by the insurance companies did little for harmonious labor relations.

The insurance companies did not oppose workmen's compensation either. They did oppose the state fund monopoly and worked against it

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[8] Ibid., p. 261.

through an elaborate propaganda machine made up of the Insurance Economics Society of America, the Insurance Federation of America, the Workmen's Compensation Service Bureau, and the Workmen's Compensation Publicity Bureau. In defense of the insurance industry, Edwin W. DeLeon, president of Casualty Company of America, said:

> The companies are doing the best they can to meet the trying conditions that constantly arise through the enactment of new laws. They do not waste time in criticising these measures or in emphasizing their defects, but by an honest concerted effort they are striving to find the best way out for the benefit of all concerned. Above all, the casualty insurance companies do not desire to perpetuate the present unsatisfactory system of compensating workmen for injuries sustained, and will welcome any legislation that provides a fixed definite scale of compensation for occupational injuries, which will enable the companies to adjust the rates of premium upon a basis that has for its ultimate purpose the elevation of the business of liability insurance to the highest place of utility and permanence.
>
> In justice to the companies, let it be said that much of the increase [in rates of employers' liability insurance] is due to the uncertainty and to the necessity of fixing rates to cover the most extreme and possibly unreasonable construction that the courts may now place upon such new laws.[9]

Lawyers were a problem for both the worker and the employer. William Green, third president of the American Federation of Labor, often told the story of the construction worker in Chicago who fell off a scaffold. Of the large retinue of lawyers at the scene, three rode in the ambulance with him. With one he signed an agreement. Several weeks later the lawyer congratulated the worker on winning a $1000 settlement and handed him a check for $500. Employers protested

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[9]Edwin W. DeLeon, "Casualty Insurance Companies and Employers' Liability Legislation," The Annals of the American Academy of Political and Social Science, XXXVIII (July 1911), 20-21.

that these lawyers stirred up their workers unnecessarily.

Organized labor held to its general policy of consistent inconsistency. Until 1910 the official statement of the A. F. of L. supported more employers' liability laws, particularly the removal of the "fellow servant" defense.[10] In the president's message of 1909 Gompers said of workmen's compensation, "This important problem is now receiving serious and careful attention. The workers have contended for it for a long period of time."[11] The executives of the A. F. of L., like their members, preferred workmen's compensation, but held back enthusiastic support, believing that it would never pass a court test. Also the unions offered group accident insurance as part of their philosophy of worker self-sufficiency and as an attraction to union membership.[12]

At a more technical level organized labor feared that between the time of passage of workmen's compensation and the probable unconstitutional ruling by the courts, those injured would lose their compensation and the right to sue under common law. Others feared that business would take the cost of the insurance out of workers' labor funds rather than increase the cost of the product or service.[13]

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[10] Malcolm Keir, Labor Problems from Both Sides (New York: Ronald Press Company, 1938), pp. 60-61.

[11] Samuel Gompers, "Report of President Gompers," Report of Proceedings of the Twenty-Ninth Annual Convention of The American Federation of Labor (Washington, D. C.: Law Reporter Printing Co., 1909), p. 27.

[12] Bernard Mandel, Samuel Gompers: A Biography (Yellow Springs, Ohio: Antioch Press, 1963), pp. 182-183.

[13] Keir, Labor Problems, pp. 70-71.

All sides agreed that workmen's compensation was a stimulus for improved safety conditions. The insurance companies hired safety experts to study the industrial environment, to make rules, and design equipment to reduce the accident level. Good safety records lowered the premium cost to employers, while a further benefit was the increasing probability of retaining experienced employees.

Opposition was unorganized but came from many laissez-faire businessmen who thought the whole scheme smacked of socialism. Many lawyers opposed the system, arguing that workmen's compensation laws were not generous enough and were too complicated for the worker to understand. In the South a small group opposed equal payments for white and black workers. Railroad brotherhoods, after the federal law of 1908, either opposed the law or demanded exemption from it.

All sides decided that workmen's compensation was the better of the two systems, and work began to pass the forty-eight state laws that would be needed. First came the appointment of various committees by state legislatures, and business and civic groups, the first in Massachusetts in 1898. Forty commissions were appointed from 1903 to 1919; the largest number, twelve, in 1911. Reports also came from the National Civic Federation, the National Association of Manufacturers, and the United States Employers' Liability Commission. All were unanimous in their support of workmen's compensation.

Miles M. Dawson prepared the first compensation bill for the Social Reform Club, which in turn had the bill introduced to the New York legislature in 1898. It suffered a fate experienced by many later bills: it was never reported out of committee. Maryland was

the first state to pass a law. Limited to mining and railroading, it allowed exemption from employers' liability laws by paying a premium into a state fund. Fifty per cent of the premium could be taken from employees' wages. There was no schedule of benefits. Montana passed a compulsory law for mines, and New York followed with a compulsory, comprehensive compensation bill for all high-accident jobs. All three were declared unconstitutional by their state supreme courts by 1910. The court decisions were based on the reasoning that such statutes took property without due process, created liability without fault, denied equal protection of the law, denied the right to sue for damages, and abridged the right of free contract.[14]

President Theodore Roosevelt, an enthusiastic supporter of workmen's compensation, demanded a federal law in his message to the Congress of 1908. In April of that year all interstate railroad workers were placed under an employers' liability law that estopped all the old familiar common law defenses. On May 30, 1908, Congress passed the first federal workmen's compensation, applying only to arsenal, navy yard and Panama Canal workers. It is perhaps a reflection of the American attitude toward labor that this first federal law was less generous than Spain's compensation act, which had the lowest pay schedule in Europe.

The demand for new compensation acts was so strong that, despite the three early failures and the lack of a final United States

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[14]Weiss, Workmen's Compensation, pp. 575-576.

Supreme Court ruling, states in large numbers began to pass the law, simultaneously making adjustments in their constitutions. The Fourteenth Amendment "due process" clause was met by making the programs elective for both the employer and the employee. To encourage election of the system, legislatures eliminated common law defenses for the non-electing party. The laws also required written proof of non-election before the accident, thus preventing any chance of double liability.

In 1917 the United States Supreme Court decided the fate of workmen's compensation in all its various types by upholding a compulsory law, an elective law and a compulsory law with an exclusive state fund. The major decision said of industrial accidents,

> . . . there is the loss of earning power; a loss of that which stands to the employee as his capital in trade. This is a loss arising out of the business, and, however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer. . . .
>
> The pecuniary loss resulting from the employees' death or disablement must fall somewhere. It results from something done in the course of an operation from which the employer expects to derive profit. In excluding the question of fault as a cause of the injury, the Act in effect disregards the proximate cause and looks to one more remote --the primary cause, . . . and that is, the employment itself. For this, both parties are responsible, since they voluntarily engage in it as co-adventurers, with personal injury to the employee as a probable and foreseen result.[15]

Forty-two states and the District of Columbia had workmen's compensation laws by 1919. Then Missouri passed another in 1925, North

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[15]New York Central R. R. v. White, 243 U. S. Reports, 188 quoted in Blanchard, <u>Workmen's Compensation in the United States</u>, p. 15. The other two decisions were Mountain Timber Co. v. State of Washington, 243 U. S. 219 and Hawkins v. Bleakly, 243 U. S. 210.

Carolina in 1929. Florida and South Carolina joined the parade in 1935. Arkansas had to struggle with the oil interest before joining in 1941. Mississippi reluctantly fell in line in 1944.[16]

Workmen's compensation was not part of any particular economic philosophy. Its support was too broad; its need too great. If any one group is to receive credit for its spread in the United States, it would be the institutional economists led by Ely, Commons, and the early membership of the American Economic Association. It followed their general plan of things--the belief that capitalism was good but could be made better through governmental programs. But once workmen's compensation had been explained by those academicians, it was quickly accepted by everyone from the National Association of Manufacturers to the Socialist Party.

Many have seen in the theories of Ely, and particularly Commons, the inception of the New Deal. Many then saw workmen's compensation as a first great step toward social welfare. Many today view the program as a precedent for Franklin D. Roosevelt's "Hundred Days." In fact,workmen's compensation set a precedent for compromise with the business community which has made this and other welfare programs wholly inadequate. The awards have never been sufficient. Industrial diseases, age of the injured, and inflation have yet to be fully considered by the law. Workmen's compensation was adopted because it was expedient to the business interest to do so. It would

[16]The years in which each state first passed a workmen's compensation law are provided in Table 1 of the appendix to this thesis.

be unfair to fix the blame for its shortcomings on the reformers and workers who supported the law. It was a clear improvement over the common law, and it was the best that could be done under the existing political system, but the fact remains that workmen's compensation has never adequately compensated industrial accidents.[17]

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[17]Analyses of the present state of workmen's compensation laws can be found in Roy Lubove, "Workmen's Compensation and the Prerogatives of Voluntarism," 254, 278-9 and John D. Hogan and Francis A. J. Ianni, American Social Legislation (New York: Harper & Brothers, 1956), pp. 446-7.

CHAPTER II

WORKMEN'S COMPENSATION--THE PRACTICE

There was one central theory of workmen's compensation: industrial society should pay for industrial accidents by a slight increase in product cost paid through the employer. But from that one theory the United States had by 1933 produced fifty-one different workmen's compensation laws. The longest written codes yet produced, they extended into hundreds of pages of detail--definitions, schedules, exemptions, and rules. Each law did, however, have certain similar features by which it can be judged. These include the system and the method of insurance, the administration, the coverage, the list of injuries and diseases compensated, the waiting period, and most important, the benefit scales.[1]

The constitutionality question created the elective system as an alternative to compulsory acceptance. Sixteen of the nineteen laws passed after the issue was settled in 1917 were still elective, probably because of the psychological opposition to any compulsory law. The elective laws encouraged compliance by voiding common law defenses of the non-electing party. Only fourteen states passed laws that were

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[1]The order of discussion of the features is the same used by Weiss in his essay in Commons' History of Labor in the United States.

compulsory to any degree.[2]

There were four methods of paying compensation under the new social legislation. Through the self-insurer method a business established a trust fund, exempt from other creditors, or gave proof of financial ability to meet the cost. This method was bitterly opposed by labor and the private insurance companies.

The other three methods were insurance plans. The big debate was between the state fund, monopolistic or competitive, and the private stock insurance company. The state fund had the support of reformers, labor, and the more enlightened industrialists. State funds were solvent without qualification. Premiums were cheaper because the major cost of the private companies, the selling expense, did not exist. The overlapping of office systems and employees was also eliminated. State funds, it was assumed, would be quicker to pay and more liberal in the amounts. The state fund was also of value to states, West Virginia, for example, whose major industry, coal mining in this example, the private companies would never insure. Labor favored state funds because of the private companies' close association with anti-union financial leaders and because of the unpleasant memories from employers' liability days.

Regrettably, state funds never proved themselves. They were not as efficient as nor any more generous than the private companies,

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[2]F. Robertson Jones, Digest of Workmen's Compensation Laws in the United States and Territories, with Annotations (11th ed.; New York: Association of Casualty and Surety Executives, 1929), p. vi.

and they lagged greatly behind them in safety research. Furthermore, state funds were never able to separate themselves from state politics. Ohio, Oregon, West Virginia, and Washington established state funds, but only Ohio had a successful program; probably because T. J. Duffy, Chairman of the Ohio Industrial Commission, was a highly regarded and efficient ex-union official.[3]

The "free enterprise" philosophy aided the private companies. State funds always suffered from the symptom of appearing to be socialistic, a handicap that private companies used to best advantage. The private stock companies' main selling point was better service through competition. This reasoning appealed to businessmen more than did short-range considerations of mere dollars and cents. E. H. Downey calculated that sixty cents of every premium dollar to private companies was used to cover cost. This made private companies four times as expensive as the monopoly state fund and twice as expensive as a competitive mutual fund.[4] Because of the common nature of a business, many companies formed mutual insurance programs for more efficiency and lower rates. Mutuals lacked the high expense of private companies, were not as cheap as state funds, but had a good record of safety research because they were able to direct all of their effort at one industry.

Figures for 1923 showed that private stock companies wrote policies of $105,813,599; mutuals, $35,042,555; and state funds,

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[3]Downey, <u>Workmen's</u> <u>Compensation</u>, p. 120.

[4]<u>Ibid</u>., p. 99.

$31,339,680.[5] Rate information was provided for all insurance plans by the National Council of Compensation Insurance or the National Bureau of Casualty and Surety Underwriters. Insurance rates were based on cost per $100 of payroll.

The Commons' formula of administration through equally represented commissions was almost universally accepted. These industrial commissions had from three to five members; Massachusetts had six. Connecticut, Rhode Island, Iowa, and New York had a single commissioner. Six other states defeated one of the major advantages of the law by retaining judicial administration. These were Alabama, Louisiana, New Hampshire, New Mexico, Tennessee, and Wyoming.[6]

The first laws were limited to workers in hazardous employments, again because of the constitutionality question. After 1917 laws were made more inclusive. Interstate railroad workers assumed exemption from workmen's compensation because of the 1908 federal law. The Supreme Court ruled in their favor in 1917. Intrastate railroad workers would have preferred the same type of law as their farther traveling brothers, but some requested inclusion in the compensation acts.

A second exempt category was agricultural workers. This group needed a similar law but inclusion in the industrial act would have threatened the passage or the success of the new program. Only Hawaii

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[5]Blanchard, Workmen's Compensation in the United States, p. 59.

[6]Jones, Digest, p. x.

and New Jersey included agricultural workers. Domestics and casual workers were exempted for much the same reason.

Originally, companies with less than a certain number of employees were exempted, as a matter of bureaucratic efficiency. The number ranged from less than three in more liberal states to less than sixteen in Alabama. Gradually most states lowered or removed the numerical exemption. All states allowed domestic, agricultural, and small business to come under the program voluntarily. Public employees were compulsorily placed under the law in thirty states. Police and firemen were usually exempt.[7] By 1920, 70.2% of the total workers in states with workmen's compensation were covered, ranging from 99.8% in New Jersey to 20.5% in Puerto Rico.[8]

There were two types of accident coverage. The more liberal states compensated injuries occurring "in the course of employment." This definition allowed for accidents to and from work, horseplay, or other accidents occurring because of employment but not directly caused by specific work performance. More limited laws compensated accidents "arising out of and in the course of employment." Payment was given only if the accident occurred while doing an assigned task.

Industrial diseases received compensation on a much more limited basis. The first laws were passed before a large number of diseases were traced to the industrial environment. By 1929 seven states, Illinois, Kentucky, Minnesota, New Jersey, New York, Ohio, and

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[7] _Ibid._, p. vi.

[8] Blanchard, _Workmen's Compensation in the United States_, p. 59.

Connecticut, compensated scheduled industrial diseases. California, Massachusetts, North Dakota, Wisconsin, and Hawaii compensated all industrial diseases.[9] Only in more recent times have laws been expanded in this area.

The waiting period was another bureaucratic device. The administrative work load would have been almost doubled without it and there would have perhaps been a temptation for workers to miss a few days with an insignificant injury. Simply put, an accident, to be compensated, had to last beyond a certain period.[10] In 1929 that period was one week in twenty-eight states; five acts had shorter times; ten acts, longer periods. Three required no waiting time. Twenty-four acts provided retroactive payment for the waiting period if the injury lasted over a specific period--usually a month.[11]

The issue on which the acceptance of any program hinged was the benefits schedule. The first laws were extremely inadequate, but in comparison to employers' liability awards, a great improvement. Awards were small also because states did not wish to put their industries at a disadvantage by having larger, more expensive benefits. Many also feared that generous awards might bring an influx of competitive labor into a state.

Several payments are incorporated into a workmen's compensation law. These include death benefits to beneficiaries and dependents,

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[9]Jones, Digest, p. xi.

[10]Downey, Workmen's Compensation, p. 53.

[11]Blanchard, Workmen's Compensation in the United States, pp. 32-33.

burial expenses, and weekly payments, with a maximum and minimum, for partial or total, temporary or permanent disability. More than any other reason, benefit schedules caused the delay in passage of this law.

Full indemnity equal to total wage loss was never achieved. In direct monetary outlay, compensation covered as little as one-fourth the cost of work injuries in low compensation states and approximately one-half in the better paying states. It was estimated in 1929 that compensation paid about one-third of the direct and indirect cost of the accident. The danger of encouraging absence beyond the duration of the injury and reckless exposure to injury were the arguments against full indemnity.[12]

No consistency prevailed among the states in the matter of distributing benefits. The same lost finger might be worth $300 in one state, $100 in the next. An outline of the procedure can be attempted by using various states as example.

If a worker died due to an industrial accident within three years of the date of that accident, workmen's compensation would pay his survivors $125 if he lived in Maryland. To full dependents would be paid 66 2/3% of his weekly wages for up to 416 weeks or until dependency ended or the widow remarried. The weekly payment had a minimum of $8 and a maximum of $18 until a total of $5,000 was reached. Minimum payment was $1,000. In other states burial expenses

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[12]Downey, Workmen's Compensation, p. 153.

ranged from $100 to $250. Dependency ended at 16 years in some states, 18 in others. More enlightened states allowed the mentally retarded to remain dependent regardless of age. In 1929 nineteen states paid dependents a fixed percentage; fifteen varied according to dependency. Massachusetts, for example, paid $10 per week to widows and $2 for each child. Deceased workers without dependents were buried at state expense and their payments given to the administrative agent for use in retraining of handicapped workers or safety research.[13]

Non-death injuries were paid on various scales depending on seriousness of the injury, loss of future income, age of the injured, and whether the injury was total or partial, permanent or temporary in disability. In Virginia the totally disabled were paid 50% of average weekly wages, with a maximum of $12 and a minimum of $6, for a period of not more than 300 weeks or a total amount of $4,500. Partial disabilities were given the same limits. Certain accidents had specific payment schedules; otherwise, they were determined by the Industrial Commission.[14] The percentage of average weekly wages paid in other states ranged from 50% to 66 2/3%. Maximum payments had a low of $4,500 and a high of $10,000. The number of weekly payments ranged from 200 weeks to life for permanent injuries.

The average weekly wage was computed differently by various states. Some figured wages to be those received in the week of injury. Labor preferred this because it was likely to be the highest. Other

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[13]Jones, <u>Digest</u>, p. 201.

[14]<u>Ibid</u>., pp. 465-467.

states added the weekly wages for the last year and divided by fifty-two. Other states divided by 360 and multiplied by seven.

All laws required the insurance to cover medical and surgical cost for a period--from a few weeks to complete coverage regardless of time. This encouraged workers to seek medical aid and kept the injury from becoming more serious, thus, increasing compensation payments.

In summary, workmen's compensation was a modification of the European social insurance program, combining the more conservative features of the English and German programs. The new law spread through the United States from 1911 to 1913. After 1920 only six states remained without compensation.

These laws were the longest and most complicated ever to reach most legislatures, but because the laws benefitted all parties in some way, they were strongly supported by all political parties, business, labor, and reform organizations. There was no organized opposition but many lawyers and the railroad workers spoke against the bill in certain forms.

The main legislative contest was between business and labor over the bread and butter provisions of disability benefits, total compensation, and medical care. The compromises on these issues so weakened the laws that they have never adequately solved the problem.

For labor and reform groups an ideal and realistic law would include a compulsory state fund administered by a three-man commission; compensation to be given to all industrial workers for accidents "arising in the course of employment" and industrial diseases; no waiting period, or one of not over three days; burial expenses of $200; maximum benefits for death or disability of $7,000; weekly payments of from $12 to $20; and wages computed as of the week of the accident.

CHAPTER III

NORTH CAROLINA--THE BACKGROUND

The economic picture from 1913 to 1929 showed North Carolina to be the Southern leader and climbing nationally. By 1927 the state ranked fourteenth in the nation in total value of factory output and thirteenth in value added by manufactures. Total value of manufactures began at $95,000,000 in 1900, grew to $944,000,000 in 1920, and by 1930 was $1,312,000,000. Total wages climbed more slowly from $14,000,000 in 1900 to $199,000,000 in 1939.[1]

There were 72,422 wage earners in the state in 1899; 157,659 in 1919; and 204,767 in 1927. In tobacco, there were 10,467 wage earners in 1914 making $2,984,000. By 1927 there were 15,976 wage earners making $12,545,075. Furniture industries had 5,801 employees in 1914 making $1,856,000. In 1927 14,821 employees made $14,417,590. Textiles, including wool, silk, cotton, and knitting mills, was North Carolina's leading industry. In 1925, 123,432 employees in textiles made $86,145,015.[2] The pay for men in the textile industry ranged from $6.56 to $2.92 per week; for women, $4.23 to $2.46 as of 1920.[3]

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[1]Hugh Talmage Lefler and Albert Ray Newsome, North Carolina: The History of a Southern State (Chapel Hill, N. C.: University of North Carolina Press, 1954), p. 535.

[2]Samuel H. Hobbs, North Carolina: Economic and Social (Chapel Hill, N. C.: University of North Carolina Press, 1930), pp. 132, 140-146.

[3]North Carolina Department of Labor and Printing, Thirty-Second Report of the Department of Labor and Printing 1919-1920 (Raleigh: Edwards & Broughton Printing Co., 1921), p. 102.

The rural population remained high throughout industrialization. In 1920 seventy-one per cent of the population lived in rural areas, even though the actual farm population was 58.7%. There were 513,000 agricultural workers. During the period from 1910 to 1930 the population of the state increased 43.7% from 2,206,287 to 3,170,276.[4]

While economic conditions changed rapidly, the political scene was relatively stationary. North Carolina was overwhelmingly Democratic with only a trickle of Republicans elected to the General Assembly from the western counties. The state government was controlled by the Senator Furnifold McL. Simmons machine, although by comparison with most any other state, it was hardly a machine. The Simmons Democrats were conservative, pro-business, with power concentrated in the central Piedmont. The eastern Democrats, claiming to support the small farmers, were known as the liberal faction.

The Simmons machine was created in 1898 to oust a Populist-Republican coalition that had gained control of the state and had placed many Negroes in prominent government positions. The Simmons machine was attacked in 1912 by Judge Walter Clark who challenged Simmons' Senate seat with the support of then-governor W. W. Kitchin. Clark did not carry one county. Simmons was eventually overthrown in 1928 because he refused to support Alfred E. Smith. Power went to the newly elected governor, O. Max Gardner, who, as head of the Shelby Dynasty, was more liberal than Simmons but still clearly on the conservative side of the fence. Generally Kitchin, Bickett and Gardner

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[4]Keech, Workmen's Compensation in North Carolina, p. 18.

are considered to be the more liberal governors in this period.[5]

The governors of North Carolina, as well as the people, were strong advocates of economic expansion. Most of the governors were lawyers and not a few of them were mill owners; yet, the state government was basically free of corruption,and a request by business, even the mill owners, was not considered an order by the legislature.[6] There was during this period a fairly active Republican Party and scattered Populist sentiment in the northeast and Sampson County.

The General Assembly was composed of fifty senators and 120 representatives who met biennially. The session was limited to sixty days starting the first Wednesday after the first Monday in January.

In 1910 324 newspapers were being published in North Carolina. The 31 dailies reported a circulation of 103,915. One hundred and ninety-two weeklies had a total circulation of 468,246. The largest daily was the Raleigh News and Observer, with a circulation of 15,000, published by Josephus Daniels. It was a voice of the Democratic Party. Second was the independent-democratic Charlotte Observer, circulation 10,600. Following behind was the Greensboro Daily News, a Republican paper of 5,000 circulation. One hundred and thirty-four papers claimed loyalty to the Democrats; 23 to the Republicans.[7]

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[5]Lefler and Newsome, North Carolina, p. 578.

[6]V. O. Keys, Jr., Southern Politics (New York: Alfred A. Knopf, Inc., 1949), pp. 205-206.

[7]North Carolina Department of Labor and Printing, Twenty-Fourth Annual Report of the Department of Labor and Printing 1910 (Raleigh: Edwards & Broughton Printing Co., 1910), pp. 241-273.

By comparison, in 1926 forty dailies had a circulation of 262,703. The weeklies numbered 161 with a total circulation of 839,810. The leading daily was again Daniel's Democratic News and Observer, circulation now 35,000. The Charlotte Observer claimed the same distribution. The Greensboro Daily News changed to an independent point of view and showed it by refusing to release circulation figures. The Democrats had the alligance of 79 papers in 1926; the Republicans had six.[8]

The Department of Labor and Printing made a study of labor unions in the state in 1910. The number of unions was put at 110, of which 47 reported to the department from a provided questionnaire. These 47 showed a total membership of 1,730. Illiteracy was less than two per cent for union members and the average scale of wages per day was $2.883. Thirty-eight unions reported health or accident insurance; 35 had death benefits. It is probable that the other unions not reporting were in the embryonic stages and that total union membership was about 2,500. Those reporting were the larger and more efficient transportation and construction groups; therefore, it is doubtful that any more than 40 unions had health and accident insurance in 1910.[9] Union membership in 1928 had grown to an estimated 20,000.[10]

The railroad brotherhoods were the strongest unions in North

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[8]North Carolina Department of Labor and Printing, Thirty-Fifty Report of the Department of Labor and Printing 1925-1926 (Raleigh: Mitchell Printing Co., 1926), pp. 307-326.

[9]N. C. Dept. of Labor, Twenty-Fourth Report, p. 43.

[10]Thomas W. Holland, "Outlook for Social Legislation in the New South," American Labor Legislation Review, XVIII (March 1928), 37.

Carolina because of their numbers, wealth, and prestige within the working classes. In 1920 there were 123,605 railroad employees in North Carolina receiving total wages of $172,716,394.76.[11] By comparison, the textile workers numbered 123,400 in 1925 and received total wages of $86,145,015, one-half the wages of the railroad workers five years before. The railroad men were also the strongest political group among the workers of North Carolina.

North Carolina's employers' liability laws were the equal of, and in one way surpassed those in, other states. By 1908 North Carolina and twenty-six other states had passed a law that prevented employers from requiring workers to sign contracts that relieved the employer of liability for accidents. By 1904 the state had allowed compensation for injuries resulting in death.[12] In 1911 the assumption of risk and fellow servant rules were abrogated for railroad workers.[13] North Carolina was the only non-compensation state that provided state funds for retraining injured workers.

The political and economic background to workmen's compensation can easily be described by facts and figures, but one other very important factor existed for which there are no statistics, but only endless arguments. That factor was the North Carolina mind. It had many

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[11] N. C. Dept. of Labor, Thirty-Second Report, p. 656.

[12] Weiss, "Workmen's Compensation in the United States," pp. 568-569.

[13] Keech, Workmen's Compensation in North Carolina, pp. 14-15.

similarities to the general Southern mind, yet there were differences; differences whose roots were in a much earlier history. North Carolina had not had as many slaves nor as many plantations as the other members of the Confederacy. The Tarheel State had twice as many desertions in the Civil War as the next highest state. In the Reconstruction period North Carolina quickly deserted the lost cause and progressed through the new causes of education and industrialization. The Tarheels had no place for the Cole Blease, Ben Tillman, Huey Long style of Southern demagogue.

North Carolina workers did not fit the mold of the complaisant redneck. If he was usually docile, he could also be a fierce opposite. The "bastard barons" of the textile industry found that out in Concord and Kannapolis in 1920 and Marion and Gastonia in 1929. North Carolina also produced a new group of Southern academic reformers. Among these were Frank Graham; Howard Odum; Alexander McKelway; and Walter Clark, a state judge who was quoted as having once said, "Every civilized government is to a large extent, and almost in proportion to its degree of civilization, socialistic."[14]

But despite these examples, the weight of evidence is clearly with those who see North Carolina as falling within the classification of "Southern state," particularly as it applies to the Southern personality and social legislation. Marjorie Potwin described the

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[14] C. Vann Woodward, Origins of the New South 1877-1913, Vol. IX of A History of the South, ed. by Wendell Holmes Stephenson and E. Merton Coulter (Baton Rouge: Louisiana State University Press, 1951), p. 469.

Southern personality in her book, Cotton Mill People, as,

> Real Southerners, they stress the personal equation and hold individual sovereignty and the freedom of contract supreme. They have a fine independence, yet they seem to lack studied self-direction. Group consciousness among them is more from external pressure than internal motivation. They despise being treated as a mass. Their group action is really collective individualism, unless led to abnormality in the heat of religious or patriotic fervor. They are sympathetic with each other in trouble; yet, notwithstanding a pronounced clanishness among families, when it comes to matters of common endeavor, "every tub must set on its own bottom," as their own homely words express it. However, is this a local or sectional or national characteristic?
>
> Perhaps nowhere else is there a people which singly and collectively has subjected itself less to self-discipline and social control. This is due not to lawless intent but to a love of freedom inherent for generations. Some there are who were born beyond the ordinary reach of the law and they see in it only an unwarranted restriction of personal liberty. Public health measures, compulsory school-attendance laws and standardized conditions of employment do not set easily on their shoulders, and they build up their own defense against such legislation by moving into localities where enforcement is less strict. Others there are who have long since caught the vision of constructive social order; who have, indeed, taken their part in its creation.[15]

Potwin also described the attitude of the Southern manufacturer as such:

> the builders of the cotton mills were not primarily manufacturers; they were the builders of a new State. They had to see things in terms of a new commonwealth. Those men were the product of a time of grave responsibility toward questions of public concern. Philanthropy and welfare work as such were not within their apperception.[16]

A new slant on this same issue was given recently by George B. Tindall:

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[15]Marjorie A. Potwin, Cotton Mill People of the Piedmont: A Study in Social Change (New York: Columbia University Press, 1927), pp. 15-16.

[16]Ibid., p. 33.

> But if Southern progressives could reconcile their traditional independence with positive governmental programs to benefit farmers and restrict big business, many of them persisted in viewing labor unions and social legislation as alien to the issues to be fought out. Shopkeepers and farmers generally held the accepted view that working men, thrifty and honest, could in due course acquire the ownership of productive property. Arguments for workmen's compensation, regulation of hours and wages, or the restriction of child labor often left them unmoved because the conditions of urban labor were either unknown or judged by traditional standards.[17]

How one interprets the account of the passage of the workmen's compensation act in North Carolina depends almost entirely on one's interpretation of the North Carolina mind. It is like asking whether a sixteen-ounce glass containing eight ounces of water is half-full or half-empty.

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[17]George B. Tindall, The Emergence of the New South 1913-1945, Vol. X of A History of the South, ed. by Wendell Holmes Stephenson and E. Merton Coulter (10 vols.; Baton Rouge: Louisiana State University Press, 1967), p. 6.

CHAPTER IV

TOWARD WORKMEN'S COMPENSATION, 1913--1921

The Simmons machine had successfully weathered the liberal revolt. Their man, Locke Craig, was the new governor. In his speech to the General Assembly of January 15, 1913, he said:

> In the protection of the people who work in factories and on the railroad, we should have an employers' liability law. It should provide reasonable compensation for injury or death without the delay and the expense of litigation. The law should be just to employer and employee and it will be to the advantage of both. It would eliminate the contingencies and expense objectionable to both. It is demanded by good business as well as by the progressive humanity of the ages.[1]

This was North Carolina's first official declaration for workmen's compensation. The statement was liberal in requesting the law for all workers regardless of the job hazard.

The legislators responded to the call. Eight employers' liability laws were introduced in the legislature and one bill entitled a workmen's compensation bill. One of the employers' liability laws was an attempt to remove the contributory negligence doctrine in all suits. Senator Mason, a leading representative of textiles, said he would not support any bill that applied to cotton mills.[2]

The legislature did pass one employers' liability law. It ap-

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[1] Raleigh News and Observer, January 16, 1913. The governor made the common error of calling it employers' liability.

[2] Greensboro Patriot, January 30, 1913.

plied only to railroads and repealed the fellow servant and assumed risk defenses. The railroads and their employees opposed the new law, saying that federal laws already made the same provisions. (This was correct except for railroads operating only in North Carolina, of which there were thirty.)[3] Railroad employees, who had also opposed the law in 1911, feared that a less generous North Carolina law might supersede the federal law.[4]

The one bill actually titled workmen's compensation, Senate Bill 265 by Allen D. Ivie of Graham, was referred to the Committee on Manufactures from which it never returned.[5]

The legislature of 1915, with forty-three Democrats and seven Republicans in the Senate, was the first to give serious attention to the compensation problem. On January 27 House members M. H. Allen from Goldsboro and F. R. Mintz of Mt. Olive, both in Wayne County, placed House Bill 451 in the hamper. The title of the bill, which might have been a record setter, adequately described the provisions of the bill. The House Journal read:

> a bill to be entitled An act to promote the general welfare of the people of this state by providing compensation for accidental injuries to workmen in our industries, and the compensation to their dependents where such injuries result in death; creating an accidental insurance department; providing for the creation and disbursement of funds for the compensation of workmen injured in hazardous employment;

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[3]N. C. Dept. of Labor, Twenty-Fourth Report, pp. 318-19.

[4]Raleigh News and Observer, January 24, 1913.

[5]North Carolina, Senate Journal, 1913 Session (Raleigh: Edwards & Broughton Printing Co., 1913), p. 115.

> providing penalties for the nonobservance, for the prevention of such injuries, and for the violation of its provisions; asserting and exercising the police power in such cases, abolishing the doctrine of negligence as a ground for recovering damages against the employers, and depriving the courts of the jurisdiction of such controversies except in certain cases.[6]

H. B. 451 was a hybrid, compensating hazardous jobs but still making use of the common law. Nevertheless, the legislature was prepared to give serious consideration to it. Judiciary Committee Number Two of the House ordered three hundred copies of the bill printed and then had it recommitted to the joint Committee on Propositions and Grievances.[7]

Co-author Mintz, in an interview with the News and Observer, said, "the bill is a comprehensive one and is designed to settle when possible claims from accidents and injuries out of the courts and providing a proper compensation for such injuries."[8]

On February 12 the Propositions and Grievances Committee held hearings on H. B. 451 and the so-called Hobgood bill, a Senate counterpart. This hearing showed the high level of support workmen's compensation had in North Carolina. W. O. Riddick, representing the North Carolina Manufacturers' Association, complained that with employers' liability insurance only seventeen per cent paid out by employers ever reached the beneficiary. Also protesting the high lawyers' fees under employers' liability, he then declared that computations made by his

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[6]North Carolina, House Journal, 1915 Session (Raleigh: Edwards & Broughton Printing Co., 1915), p. 129.

[7]Ibid., p. 214.

[8]Raleigh News and Observer, January 28, 1915.

association showed the rate for liability insurance in North Carolina to be double that obtained in any other state, owing to the uncertainty of jury verdicts. Insurance Commissioner Young supported a compulsory bill which would "cover as nearly as possible all classes."

Representing the newly organized North Carolina State Federation of Labor, O. R. Jarrett, its first president, said he "wanted a bill that would compensate," and further suggested the Michigan law as an example of one fair to both sides. A statement by Jarrett that "the workingmen of the state were a small factor in the shaping of legislation," was sympathetically received by some members of the committee.

In one of the strongest statements by a member of management, A. E. Tate of the Southern Furniture Manufacturers Association suggested a compulsory state fund insurance. Tate disapproved of both bills under consideration and believed that passage of either would mean repeal in the next session.

Curtis Bynum of Asheville, a leader of the more liberal labor group, opposed a suggestion to form a commission to present a bill next session because both labor and capital wanted a bill passed now.

Outside the hearing room, former judge J. D. Murphy claimed that one-half of the judicial districts of North Carolina could be abolished if the workmen's compensation act were passed. Briefly discussing the rapid acceptance of the law by twenty-six other states, he declared the present bills "wise" and not only denied that lawyers of the legislature were against it, but declared that the Bar Association endorsed it. Backtracking slightly, he endorsed a study commission that

would report to the next session of the General Assembly.[9]

Hope for the bill plummeted when, in the following week, the Propositions and Grievances Committee marked the bill unfavorably. By motion of Harry Nettles of Buncombe County it was tabled on March 6.[10]

The 1915 session clearly demonstrated the large base of support for workmen's compensation in North Carolina. Business in the state needed the law to lower premium rates, and segments of the business community were willing to pass an extremely liberal law. Labor, having just learned to walk, asked only for a fair and not-too-liberal act. Opposition to the two bills was noticeably nonvocal. The bills were so inadequate that defeat could have been a combined effort of those opposed to the theory of compensation and those who supported a more liberal law.

Better bills and better opposition were the counterpoint themes of the 1917 session. Early in the session, on January 22nd, Representative Carter Dalton, young son of a railroad official, showed the reforming spirit of youth by introducing a workmen's compensation act in a package with two others, one, a bill to raise the "age of consent" and the other "to raise the moral responsibility of girls."[11] The Raleigh News and Observer described Dalton's workmen's compensation bill as "about the best of this class of bills coming in so great a number

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[9] Raleigh News and Observer, February 13, 1915.

[10] North Carolina, House Journal, 1915 Session, pp. 562, 875.

[11] These morality bills passed, thus raising the age of consent from fourteen to sixteen years of age.

before the General Assemblies of several past sessions."[12]

Dalton's bill was elective, but had compulsory insurance, i.e., no self-insurance provision. The basic payment provision gave 60% of wages for 300 weeks, with a maximum weekly payment of $20, minimum of $10, for death and permanent disability. The schedule for temporary and partial disability was taken directly from the Indiana law. The act was to be regulated by paid officials on a board of regulation. The waiting period was fourteen days and medical benefits extended for thirty days. Remembering that unions often used low accident insurance as attraction for joining, the bill exempted any benefits from labor unions or fraternal societies from computation in the compensation. The act, so claimed the News and Observer, was similar to the Hobgood bill of 1915.[13]

Joint hearings by the Judiciary Committees of both houses began on February 1, not on the Dalton Bill (which as an individual effort probably lacked either the prestige or the support to win serious consideration) but on bills presented by Senator Jones of Asheville and Brenizer of Charlotte. The first testimony came from Curtis Bynum, the author of the Jones bill. The need was increasing rapidly, Bynum said, and there was an increased strain on the court system. In comparing his bill to Brenizer's, Bynum said that his bill provided benefits for life at a 66 2/3% rate and included occupational diseases. Brenizer's bill had a 60% rate and a 300 weeks limit.

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[12] Raleigh News and Observer, January 23, 1917.

[13] Ibid.

Representative Pearson asked Bynum in whose interest the bill was drawn, commenting that he had telegrams from both manufacturers and employees opposing the bill. Bynum replied that he spoke "as a consumer and a concerned citizen," but betrayed himself by immediately reading into the record the North Carolina State Federation of Labor statement in support of workmen's compensation. R. C. Bell asked how much he had been paid to draw up the bill. Bynum, with no overabundance of politeness, said he had received "not one cent." Bell was not a legislator but the representative of the Conductor's Brotherhood, and he testified later. His interrogation, based on no authority, might indicate a very loose hearing or a very biased one.

Senator Brenizer gave workmen's compensation a killing blow in his testimony. The bill was not his, Brenizer said, he had only introduced it as a favor to Insurance Commissioner Young who had had the bill drawn up by ex-superintendent Hotchkiss of New York. Twisting the knife, Brenizer said he did not care whether the committee approved the bill or not. In what might well be the most revealing statement in the history of workmen's compensation, Brenizer then said that workmen's compensation laws "legislated against lawyers, as it would cut them out of fees." Capital and labor should be as unprejudiced in its consideration as were the lawyers, he thought.

Major W. F. Moody of the Raleigh Central Labor Union asked that some of the members of the eighteen represented crafts in the CLU be allowed to speak on the bill. R. C. Bell spoke again, advertising himself as representing 350 Southern Railway conductors in opposing

the bill. The railroads would usually meet a man halfway, he said, and if not satisfied, he preferred to resort to common law. C. C. Page, representing the Brotherhood of Engineers said that he represented 1000 men "tooth and toenail" against the bill.

The second president of the State Federation of Labor, W. E. Shuping, said that although the SFL had previously endorsed workmen's compensation, this did not mean a "real" compensation act. It did mean that there was a large split in the SFL over workmen's compensation and that Shuping represented those with views similar to the brotherhoods of railroad.

Major Moody wanted an act fair to all and felt that the present bills put employers "on the bum." Mr. E. R. Pace, representative of the Machinist Union, showed great prophetic skill and typical working-class humor. He had come to learn, he said, and what he had learned was that there would be no compensation act passed this session. A Mr. Lewis of the Boilermakers' Union, H. W. Hargis of the Conductors' Brotherhood, and J. A. Dodson, general chairman of the Seaboard Lines, also opposed the bills.

The last witness, A. L. Brooks of Greensboro, president of the State Bar Association, spoke briefly of the theory behind workmen's compensation. Not only employers and employees, but also society had a great interest in a compensation law. The lawyers, he said, had been unselfish in trying to get legislation of this type. When asked who was behind the measure, he said that it was the result of the movement

for social justice.[14]

The next committee hearing was on February 8. The testimony of the previous week had destroyed any interest in the hearing and any chance of the bill's passage. One newspaper reasoned, "There is little prospect of even favorable reports from committee and none of getting the measure through. The work is now admitted by advocates to be purely educational."[15] Senator Brenizer testified with a little more paternal responsibility toward his bill. He suggested that it might be acceptable if it were made elective rather than semi-elective. He predicted that a great influx of people would elect the law within four years of passage.[16]

Senator Brenizer, hoping to save the effort from total fruitlessness, proposed Senate Resolution 1501, to appoint a special commission to study the law and report to the next session. The Senate approved and sent the resolution to the House Committee on Manufacturing and Labor on March 2. The Resolution died there. On March 5 Judiciary Committee Number One reported unfavorably on both the Jones and Brenizer bills.[17]

During these first three sessions, the state's efforts for a workmen's compensation law were led by Insurance Commissioner James R. Young. Young was born in Vance County in 1853. Educated at Hampden-Sydney College, he had entered the insurance business and was elected

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[14] Raleigh News and Observer, February 1, 1917.

[15] Greensboro Patriot, February 12, 1917.

[16] Ibid.

[17] North Carolina, Senate Journal, 1917 Session (Raleigh: Edwards & Broughton Printing Co., 1917), p. 802.

insurance commissioner in 1899. If there was a hero for the compensation law, it was James Young. He actively recruited state officials for his position, consulted other states for sample laws and suggestions, drafted some of the nation's best legal minds to write compensation laws for the state, and welcomed the assistance of the American Association for Labor Legislation.

In 1917 Young wrote an open letter to the members of legislature. Because it reflected the position of the state and many of its officials, it is quoted extensively here:

> The enactment of a Workmen's Compensation law is one of the most important and necessary matters claiming the attention of the present General Assembly . . . .
>
> Our laws are very deficient as to employers' liability and kindred matters. The Commissioner has called the attention of the last two General Assemblies to the fact that it would be well to have these laws added to and improved and a workmen's compensation act in force in this State. There can be no question but that the principles of the workmen's compensation laws in force in so many of our States are right. It is the best and most progressive way to deal with these matters, and in the end will prove best for the citizens of our State. The Commissioner believes that this General Assembly should enact such a law as will be up to date, will contain the principles of these acts, and can be administered by the State at the smallest cost. The employers and employees of the State should, and your Commissioner believes do, favor the principles involved in these laws, the only question being as to the details or special provisions of the law. The matter should be taken up, discussed, and passed upon, not as a law in the interest of employers or in the interest of employees as against the other, but as a law that will prove in the end best for all the employers as well as of the employees who come under its provisions. The principles of the workmen's compensation act are right, and the State cannot afford not to be progressive enough in its legislation to have these and, in fact, all laws for the good not only of the State but of its different classes of citizens.

Commissioner Young described the conditions which had made the law necessary and recounted the statistical and theoretical arguments

for the law. He then gave his recommendations for the North Carolina law:

> In my opinion, a Workmen's Compensation law should be enacted in this State. It should be elective, and provision made for its enforcement at the smallest cost to the State. Of course, it would cover injuries received in course of the employment, and the settlements for the same would be automatic. The scale of compensation should be fair to all parties concerned, and should include medical and hospital services, with funeral expenses. The employers should be required to provide security for the payment of these claims unless they can show that they are sufficiently strong financially to bear it. They should be allowed to insure in licensed stock companies, mutuals, or to organize a company among themselves under our laws. In the operation of these laws there is usually an individual rating system, and the employers are given credit for whatever safety appliances they provide or means they take for the prevention of accidents . . . .
>
> In my opinion, formed after a study of several years of the subject, even though starting out with a prejudice against it, Workmen's Compensation laws are right in principle and should be upon the statute books of our State. The employers and employees, with all who have any interest in or knowledge of the subject, should unite in aiding the members of the General Assembly to frame and get up a proper and a fair bill.[18]

Beginning with the Biennial Report of 1916, published in 1917, both the Department of Insurance and the Department of Labor and Printing would recommend the passage of a workmen's compensation law. Young retired the following year and was replaced by the chief clerk, Stacey W. Wade. The Department of Labor Commissioner from 1910 to 1924 was M. L. Shipman. He was followed by Frank D. Grist. All were strong supporters of the measure.

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[18]James R. Young, Workmen's Compensation: The Advantages of Such an Act for the Employers and Employees of the State, Raleigh: for the Insurance Commissioner, February 3, 1917.

The lines of battle had clearly formed in 1917. The same legislators, elected in 1916, returned for the 1919 session and planned to waste no time on an issue that was a predetermined failure. The only new element in the 1919 environment was the newly organized network of union newspapers. The Wilmington Saturday Record, a weekly, was the first of these, organized in 1915 and owned by John Speed and George W. Cameron. Cameron was also the editor and eventually took complete ownership. It had a circulation of 1500 in 1920. In 1925 the name was changed to The Union Labor Record with a circulation of 2000. The Raleigh Union Herald, a Thursday weekly, was founded in 1917, owned by Charles Ruffin and Claude S. Long and edited until 1919 by C. F. Koonch. The Herald eventually gained the largest circulation of the union papers but in 1920 it was the lowest of the three with only 1300 in circulation. This had increased to only 1500 by 1925. The third, largest, and most liberal was the Asheville Labor Advocate which appeared each Thursday to 3000 readers. C. G. Worley and James F. Bennett were the owners; Bennett also served as editor.[19]

The Union Herald carried the banner "endorsed by organized labor and Wake County Farmers' Union" until 1921 when it would become the representative of the American Federation of Labor. Each of the three papers was principally the voice of the Central Labor Union; the location of the three CLU's corresponding to the location of the three papers. The CLU was a policy-directing organization in a city or district,

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[19] N. C. Dept. of Labor, Thirty-Second Report, pp. 36-52.

containing representatives, usually five, from each of the unions and brotherhoods, as well as some at-large members. The railroad brotherhoods participated in the CLU even though they were not A. F. of L. unions, the major component in the CLU. Major Moody in the 1917 hearings stated that the Raleigh Central included eighteen crafts, nine of these railroad brotherhoods. In 1920 the Union Herald listed an index of twenty-nine unions, still with nine brotherhoods. Of the remaining twenty crafts, the larger ones were in construction. There was the Motion Picture Projectionist Union, a barbers' union, a teachers' union and three Negro construction unions.

The Legislative Committee of the State Federation of Labor came out in 1919 in opposition to a six-month school term, opposed a law requiring employers to give statements of wages to the state for tax purposes, and supported a law requiring all men to be examined before marriage. There was strong support for the child labor law and no mention of workmen's compensation. The attitude of the Union Herald toward compensation in its new form was vitriolic. A January editorial stated:

> As far as Union Leader is concerned it wants none [labor legislation], and at this session will ask that none be passed effecting labor, as the laws now on the statute books are ample and it is dangerous to be experimenting with legislation at this period after the war reconstruction period, for no one knows what "ups and downs" the country may have before it gets on a stable basis. Labor is informed that the usual compensation acts will be presented for consideration. This is going to be as bitterly opposed as the same scheme presented two years ago was opposed.[20]

[20] Editorial, Raleigh Union Herald, January 11, 1919.

A report to the governor from the Commissioner of Insurance said:

> So far action has not been taken, largely because of the fact that our people have not been educated to know the value and importance of such a law . . . . The Commissioner would strongly urge the governor of this state, in your recommendations to the General Assembly, shall bring this matter to their attention, to the end that it may receive such a consideration as it deserves at their hands.

To this the Union Herald replied:

> Of course the Union labor people that oppose the Compensation Act are ignorant and without common sense . . . .
> . . . .
> The people should congratulate themselves, shake hands with South Carolina and Haiti and say, "Ain't we Tar Heels it?" even if we haven't a compensation law.[21]

No workmen's compensation laws were presented to the North Carolina General Assembly in 1919.

Governor T. W. Bickett called a special session of the legislature August 10, 1920. The purpose was to prescribe a new tax rate and ratify the Twentieth Amendment on woman's sufferage.

This special session coincided with the annual convention of the State Federation of Labor. Major W. F. Moody, chairman of the Legislative Committee and president of the Raleigh Central Labor Union, was the new and the third president of the SFL. The convention opposed any change in the primary law and gave strong support for the color line, licensing of plumbers, and the woman's sufferage amendment, but workmen's compensation was the central issue. The debate over a resolution calling

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[21]Editorial, Raleigh Union Herald, February 1, 1919.

for enactment of the law developed into a "warm discussion" and "animated talk," prejudiced newspaper words for a minimal loss of blood.[22]

The resolution carried, but only after a compromise. The original resolution had requested that the law be modeled after the Ohio state fund law, the one most popular with the national A. F. of L. Some members said that they had worked under the Ohio law and did not favor it. President Moody, still representing the conservative labor element, tried to redirect the convention's efforts to a resolution on a stronger employers' liability law. Moody told the convention that North Carolina had a good law for damages except for a contributory negligence clause.[23]

The position of North Carolina labor was changing. The new, liberal faction was gaining power, and the workmen's compensation resolution was an early test of that change. Moody recognized this and in his final presidential report of the convention made an effort to justify and apologize for past opposition to workmen's compensation, and particularly the part that the Labor Legislation Committee had played in defeating it. Said the report:

> It is now being claimed that the Compensation act, that was defeated some years ago, was defeated by the corporations. History should be kept straight. Two compensation acts were introduced, one that had the endorsement of the Asheville labor organization [the Jones bill written by Curtis Bynum], and the other had the endorsement of the Insurance Department and the Bar Association [the Brenizer bill]. Both were defeated through the efforts of the Labor Legislative Committee, for the reason the Asheville bill could neither be amended to make it satisfactory, or passed. The endorsed Bar Association Act

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[22] Raleigh Union Herald, August 12, 1920.

[23] Ibid.

> could have been passed, but was not satisfactory. The lawyers' act was endorsed by some of the manufacturers, especially the pulp mill owners, near Asheville. A just and fair law is desirable, but the labor people would be foolish to accept anything just so it is called compensation.[24]

On August 20, Governor Bickett sent a message to the special session. It read in part:

> There has never been a time when I was not in favor of a workmen's compensation act. The human breakage in industrial plants should be as much a part of the fixed charges of the business as the mechanical breakage. This principle is now well-nigh universally recognized in all enlightened nations.
>
> For a number of years the General Assemblies of North Carolina have accepted this fundamental principle. Several efforts have been made to pass a workmen's compensation act, but in every case the effort has failed because it was impossible to agree on the details of the bill. This failure was largely due to a lack of time during the session of the Assembly to investigate the facts and reach sound conclusions.
>
> Therefore, I recommend that this General Assembly appoint a special commission, fairly representative of the workmen and the employers, whose duty it shall be to make a careful investigation of this question, and submit for the consideration of the General Assembly of 1921 a modern, model workmen's compensation act.[25]

The Bickett request was placed on the calendar August 23 as Senate Resolution 437 and House Resolution 343 and introduced simultaneously. On August 24, S. R. 437 "to establish a committee to study facts concerning a workmen's compensation law" passed. O. Max Gardner, lieutenant governor, appointed Lindsey C. Warren of Washington (North Carolina), Dorman Thompson of Statesville, and W. R. Mathews of Charlotte.[26]

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[24] Ibid.

[25] Fifth message of Governor T. W. Bickett to the Special Session of the General Assembly of 1920, August 20, 1920, North Carolina, State Archives, Bickett Miscellaneous Papers.

[26] North Carolina, House and Senate Journal, Extra Session 1920 (Raleigh: Edwards & Broughton Printing Co., 1920) pp. 115, 130, 161, 189, 210.

Eugene Holton, Republican candidate for U.S. Senator, wrote an open letter to Governor Bickett in the Union Herald, in which he gave a sample bill that he thought would compensate for the "human breakage" of industrial society. The bill was entitled "An Act to abolish the assumption of risk and contributory negligence in actions for damages sustained by the employee."[27] This faithful adherence to the cause of employers' liability might have moved a few of labor's votes to his side in years past, but in an editorial printed in the same issue, the Union Herald said:

> The long-hoped-for workmen's compensation law, which ought to have been placed on the statutes of North Carolina long ago may be enacted at the regular session of the Legislature which convenes next winter. The outgoing Governor favors it, but what is more important, the incoming Governor is apt not only to "favor it" but to get actively behind it during the next session of the General Assembly. All the States now have a law except six, of which North Carolina is one.[28]

The change in editorial position was part of the same movement that had sweat the labor convention. Power had been snatched away from editor Koonce and his clique at the Central Labor Union. In their place the owners put Maxwell Gorman, editor, and a new group of writers to speak more in the style of the national labor movement. Koonce and his group would hereafter appear on the masthead as "advisors."

The News and Observer reflected the new hope for a compensation law and analyzed North Carolina's social attitudes:

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[27] Raleigh Union Herald, August 26, 1920.

[28] Ibid.

> North Carolina is in many ways a progressive state in social legislation. It is the standard of excellence, known and respected all over the country, in respect to laws for the care of delinquent children. But it is badly behind the times with respect to a workmen's compensation law. Attempts have been made to write one on the books. But the mistake has been made of making the attempt without due preparation. Drawing the law is not an easy task. It requires careful study and technical knowledge, so the law has failed for lack of time for thorough consideration . . . . [Bickett's] forethought should result in it being easily possible for North Carolina to write this progressive law on its statute books.
>
> . . . .
>
> North Carolina cannot wait longer than the next regular session of the Legislature for this form of protection to the working man's family.[29]

The people of North Carolina and the state labor movement expected a law the next year. Perhaps their expectations would have been lower if they had carefully evaluated the 1920 Special Session. One of the major reasons for it was to pass the federal amendment for woman's sufferage. North Carolina's approval would have been the thirty-third and final vote necessary to amend the Constitution, but the legislators of North Carolina chose not to acquiesce in the grand scheme of reform. While liberals in the legislature tried to change the minds of three of the sixty-three calculated votes against the Anthony amendment, the Tennessee legislature met in special session and gave women the vote. Politicians work in mysterious ways.

The interim commission met with Insurance Commissioner Young to do its considering and recommending. Time was the quantity of most need. The whole idea of the commission was to give time to a vital issue, but there simply was not enough time. The Special Session of 1920 ended in

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[29] Editorial, Raleigh News and Observer, August 25, 1920.

late August. In November all were up for re-election and only one of the three, Luke Young, would return to the Legislature of 1921. The "Young Report," as it was called, was given to the General Assembly in the first week of the session. It read in part:

> We have given this subject considerable thought but have in no sense, on account of the time, given it exhaustive consideration. We find that a workmen's compensation law is in force in almost all of the countries of Europe and in every State of this union except four. We, therefore, conclude that North Carolina will soon, if not at this session, adopt a measure of this character, and it is only a question as to what form it shall take and when it shall be adopted.
>
> We believe that we can best present our conclusions as to the provisions of such a law by presenting a formal bill . . . .[30]

The Young bill had ninety sections. The report commented on only one of these, an entirely new provision of which the Commission was very proud. They believed, and were correct, that such a provision was in no other workmen's compensation law. The new feature provided that double compensation would be given for injury or death resulting from gross negligence of the employer, and that no compensation would be given for willful misconduct on the part of the employee.

The new provision was met with indifference, as was the Young bill in general. It was not a good bill and had been written by the patchwork method, taking a paragraph here and a section there, but the bulk of the law come directly from the very bad Virginia statute. It is difficult to understand why Insurance Commissioner Young would have chosen such an obviously inferior law, certain to receive the full

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[30] Report of the 1920 Workmen's Compensation Commission, printed in full in the Raleigh Union Herald, January 13, 1921.

opposition of the labor camp. Nevertheless, on January 20, Luke Young introduced House Bill 149 which was sent to Judiciary Committee Number One, and one thousand copies were ordered printed.[31]

That the Young bill could never pass was obvious early in the legislative term. Attention turned quickly to a bill prepared by Senator DeLaney of Mecklenburg County. DeLaney, with several other legislators, had begun working on a statute before the session began, after learning what would be in the Commission's report. Organized labor put much hope in the DeLaney action, but even before the bill was introduced, word spread that, at the insistence of the manufacturers, its more liberal sections, taken from the New York law, had been exchanged for the features of the inferior Virginia law.[32] The Union Herald remarked to the changes in the DeLaney bill by saying:

> It comes to the ears of this paper that some of the provisions (taken from the Virginia law) contained in the bill of the committee of last year's legislators, have been accepted and have been incorporated into the DeLaney bill--features at which organized labor has officially in meetings pronounced its dissatisfaction and registered its earnest disapproval and opposition.
>
> If these features are to retained in the measure (for reasons exactly divergent to those which prompt labor's protest) then the bill will get notice that so far as organized labor is concerned it is not needed, and if passed it will be enacted NOT TO HELP LABOR, but over the protest of labor.
>
> We are aware that some people are strong on the assumption that there are other means of choking a dog than with butter, but Labor is no longer regarded as the "dog" in legislation of this character, we infinitely prefer that no change in the present law affecting labor be made than that this sort of legislation shall be perpetuated and forced upon us.

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[31]North Carolina, House Journal, 1921 Session (Raleigh: Edwards & Broughton Printing Co., 1921), p. 56.

[32]Raleigh News and Observer, January 21, 1921.

> The Union Herald stated when this legislature assembled that Labor had a right to expect it to be on friendly terms with us, and especially the Democratic members of it, whose party owed so much to labor in the last campaign.[33]

The Union Herald was not satisfied to attack the bill in general terms. The entire January 27 edition of the paper was given over to printing the complete DeLaney bill, accompanied by a thorough critique of each section. These comments showed what labor thought was a good bill, and demonstrated that expert legal minds were involved in labor's efforts. Here are included some of the typical comments:

a) In the exemptions clause, instead of "notice of exemption . . . shall be given thirty days prior to accident," labor preferred "not less than thirty days."

b) In the clause preventing compensation for intentional misconduct or failure to use safety appliances, labor wanted it made clear that injuries were "intentional self-inflicted" and that failure to use safety appliances should defeat compensation only when such safety appliances were furnished.

c) Section 18 read: "No benefits, savings, or insurance of employee shall be considered in determining the compensation of this act except as herein provided." Labor wanted to omit "as herein provided."

d) Only employers, not employees, should be required to give written notice of accidents.

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[33]Editorial, Raleigh Union Herald, January 20, 1921.

e) The limit of time on compensation claims was one year in the bill; labor wanted two years.

f) Instead of exempting businesses employing less than nine, labor suggested a minimum of five.

g) Labor requested that there be no direct settlements and that all settlements should be approved by the industrial commission.

h) The fine to an employer for not filing a written report within thirty days was $25. Labor suggested a fine of $100.

i) Medical treatment was limited to thirty days. Labor suggested no limits.

j) The basic financial benefit schedule requested by labor was 66 2/3 per cent of weekly wages to a maximum of $6,000. The weekly payments should range from $8 to $20 and the bill should pay $200 for funeral expenses. The DeLaney bill had a $5,000 maximum with weekly rate computed at 60% with a $6 through $12 range. Burial expenses were $100. The Young bill had a $4,500 maximum.

In other places the Union Herald corrected grammar and spelling. The word "employee" on line three of section fourteen should be "employer," they said, and similar comments continued for almost six pages. The analysis closed with this comment:

> Rather than see either the bill introduced by Representative Young [or the DeLaney bill], . . . Labor is very positive that it would much prefer to "standpat"--for we would be worse off than under the existing laws.[34]

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[34] Raleigh Union Herald, January 27, 1921.

J. F. Flowers, a liberal Charlotte lawyer who later defended Fred Beals after the Gastonia strike of 1929, wrote a letter to the Union Herald on February 3, 1921. The letter contained the well known and often repeated arguments for compensation, but its main purpose was to bring the railroad brotherhoods to active support for the law. It said in part:

> There is opposition from the railroad men and possibly some other crafts, but so far there has appeared no opposition except from the railroad men, who would not be affected by the law, as both bills now before the legislature exempt the railroad employees . . . . It is difficult to understand just how the position of the railroad men can be justified. They have power enough to have gotten from the legislature of the state the abrogation of certain defenses, and therefore occupy a privileged position, and yet they oppose a bill designed to protect classes that do not enjoy the privileges and advantages that they enjoy, and the bills now being considered would not affect the railroad men at all.
>
> The railway men have been organized for some time and have possessed, or the legislature thought they possessed the power to affect the results of an election, and they got the concessions. Textile employees have not possessed that power, and they have not been considered. It is not fair, and the people of the state ought not to stand for the continuance of this discrimination . . . .[35]

In the last week in January the State Executive Board of the North Carolina State Federation of Labor met in Raleigh. They contributed their own "short and sweet" bill to the five that had already been presented. The Executive Board law read:

> The General Assembly of North Carolina Do Enact:
> 1. That the Fellow-Servant rule and the rule of assumption of risk is hereby abrogated, to the extent that it can be considered only by a jury in determining the amount of damages in actions brought for personal injury or death sustained in industrial occupations.

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[35]Letter, Frank Flowers to the editors of the Raleigh Union Herald, February 3, 1921.

2. That this act shall be in effect from and after its passage.[36]

The conflict within the SFL was still strong and the influence of Major Moody was not at an end. This regression to the days of employers' liability brought strong comment. The liberal Asheville Central Labor Union passed not one, but several resolutions condemning the Executive Board and suggesting that they should have applied their efforts to the enactment of a workmen's compensation law. To this heated attack from the west, the Union Herald commented:

> What the Asheville meeting could have done with more force would have been the adoption of a resolution urging the state board to use its best efforts to prevent the enactment of a bad and unjust state law that would impose greater hardships on labor in cases of injury than they are forced to bear at present.[37]

Besides the Young, DeLaney, and the "short and sweet" bills, three others were introduced. The minority leader of the House, Williams of Cabarrus, introduced the same bill that had been suggested by the Republican senatorial candidate, Eugene Holton. It was another simple two-section employers' liability law to counter the traditional contributory negligence and assumption of risk defenses, and to attract some of labor's more conservative followers to the Republican party. Some people continued to have difficulty distinguishing between workmen's compensation and employers' liability.

The other bill was introduced by Senator Dewar of Cherokee.

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[36]Raleigh Union Herald, February 3, 1921.

[37]Raleigh Union Herald, February 10, 1921.

It was based on the Ohio state fund law and received the immediate support of the News and Observer.[38] Dewar's principal argument for his bill was the reduction of administrative cost, from thirty-five per cent of the cost of private company premiums down to three per cent with state fund. Thomas J. Duffy of the Ohio Industrial Commission spoke at the hearings at the request of Dewar.[39] The Union Herald commented that as to the method of insurance provisions of any bill, "we are up a tree."[40]

Obviously none of the five bills would satisfy the major interest groups. In the second week in February, the manufacturers, SFL, and other interest groups met to begin the serious work of coming up with a compromise bill. At an all-night, face-to-face meeting twenty-five of the largest employers and representatives of labor settled their major differences. The only snag came when, after all other cotton mills had agreed, Ned Parker, representing the Alamance textile interest, "in his B.V.D. immaculate white undersuit flew the track." Labor had gotten the best of him, he said. Whatever the situation, labor seemed satisfied with the results. The headline of the Union Herald read:

> Changes Made in Bills Previously Printed in This Paper Pointed Out; Labor Wins in Some Important Contentions; Prospects of Enactment of Satisfactory Law Now Good For First Time Since Bills Were Presented.

The first sentence of copy read:

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[38] Raleigh News and Observer, February 6, 1921.

[39] Raleigh Union Herald, February 3, 1921.

[40] Raleigh Union Herald, February 10, 1921.

> With anything like tolerable good luck Labor will before the end of this week have won out in getting a satisfactory report from Judiciary Committee No. 2 on a fairly well developed workmen's compensation.[41]

The two sides were in such close agreement that a final meeting to settle some small issues was canceled.

With the exception of a few laws in the Midwest, the compromise bill was the best bill ever written in the United States. Some of its sections were the most sophisticated ever drafted. The bill made provisions for children over eighteen who were still dependent due to feeble-mindedness or permanent physical disability. Next, the law recognized that the finger of a printer was more valuable than the finger of a carpenter and the leg of a carpenter of far greater value than the leg of a linotype operator. This seemed an obvious truism but labor had had difficulty getting recognition of the fact. The corporal inequality was remedied in the compromise law by fixing a sliding scale of payments for partial disability under the authority of the Industrial Commission.

The bill also allowed the Industrial Commission to increase the payment to young employees totally disabled. A boy who lost his leg at eighteen, it was reasoned, should receive more than the man of fifty who had fewer years of wage accumulation left.

Lump sum death payments were allowed, at the discretion of the Commission, as well as a sliding scale for injuries that allowed the Commission to award as much as double the usual rate for highly skilled

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[41] Raleigh Union Herald, February 24, 1921.

workers. The bill had a basic $6,000 maximum.[42]

What happened to the compromise bill? It was probably stopped by Attorney Parker and his cohorts. It is impossible to say because the whole legislative mill was unable to produce any laws of a major sort near the end of the session. The bill was never entered on the calendar. It was March 7 before the Young and the Dewar bills were returned, both marked unfavorably.

To prevent the whole episode from being a total failure, on March 4 A. L. Quickel of Lincolntown introduced H. R. 1447 to establish another commission. It was returned favorably on the same day by the Committee on Appropriations and passed the House on March 5. On March 8 it went to the Senate and was defeated twenty-two to seventeen. DeLaney and Dewar were among those voting against.[43]

The Union Herald had this final comment:

> No compensation bill at all was preferable to the Young Bill . . . It never stood a chance of passage although there were some elements that worked hard for it.
>
> After many tries at the cherry, after many eliminations and inserts into the DeLaney Bill the same crowd made the passage of that measure impossible, because it was made to read against justice and labor.
>
> About the "compromise bill." When the lawyers employed by the radical elements of the manufactuers looked it over, they rejected it and said it was not what they wanted (which was quite true) and that they would rather not have any law on the subject than that . . . .
>
> LABOR WAS NOT HURT BY THE FAILURE TO PASS EITHER THE DELANEY OR THE YOUNG BILLS. Therefore let us rejoice.
>
> Opposition to labor did not gain anything by failing to secure the passage of these measures. They say they gained

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[42] Raleigh Union Herald, February 24, 1921.

[43] North Carolina, House Journal, 1921 Session, p. 657.

little by getting the compromise bill, which they didn't want. So let's rejoice some more and call it a draw with a "ha-ha" to the good.[44]

[44]Editorial, Raleigh Union Herald, March 10, 1929.

CHAPTER V

TOWARD WORKMEN'S COMPENSATION, 1923--1929

The major concern of tobacco-chewing Cam Morison in his message to the General Assembly of 1923 was the unbalanced budget. He also discussed highway bonds, conservation, and the development of a Department of Commerce. No mention of workmen's compensation was made, but the Democratic Party in 1922 put a plank in their platform in support of the law.

The only change in labor was the noticeably weakened railroad brotherhoods. The nationwide railroad strike of 1922 had been disastrous to the funds and the jobs of the union men and public sentiment was against the brotherhoods.

The North Carolina SFL in its official policy statement supported more rigid child labor laws and free textbooks. It stood opposed to repeal of the white primary, motion picture censorship, garnishment legislation, and anti-picketing laws. Of workmen's compensation the SFL said:

> In regard to the workmen's compensation act, the president rules that no discussion was necessary as the High Point convention of the federation in 1921 adopted and printed a proposed law, that the convention at Wrightsville Beach in August, 1922, approved for the second time the proposed law, and the executive board was obligated to carry out the wishes of the convention. The proposed law . . . will be presented and supported by the state federation.[1]

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[1]Greensboro Daily News, January 2, 1923.

Thomas J. Duffy, chairman of the Ohio Industrial Commission, returned to discuss the Ohio system with labor. Before workmen's compensation in Ohio, death compensation averaged $832, with twenty-five to fifty per cent going for lawyers' fees. One case had dragged through the courts so long that all claimants, including heirs, were dead. In 1922, Duffy said, $13,000,000 had been paid out. Duffy explained the political situation--the Ohio SFL and some employers on one side; insurance companies and some employers on the other.[2] A Central Labor Union meeting the following week in Greensboro went on record as opposing any measure not modeled after the Ohio and Tennessee bills.[3]

Two bills were introduced in 1923--the Wade bill and the Parker bill. Stacey Wade, the Insurance Commissioner, introduced his bill in direct response to the Parker conservative textile bill. Wade declared that in 1921 some interest, understood to be largely textiles, had introduced a "so-called" workmen's compensation bill that as a whole lacked the approval of the workers of the state. Wade made it clear that not all textile nor all industrial organizations were responsible for the Parker bill.

The major objection to the Wade bill was its state fund provision based on the Ohio law. He said that many people were confused on the state fund. They believed that the state would pay the compensation.

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[2] Raleigh Union Herald, January 4, 1923.

[3] Greensboro Daily News, February 12, 1923. The piedmont was slow to organize unions. This one was a Piedmont CLU. Greensboro and Winston-Salem formed their own centrals in 1928.

If people were really interested, Wade said, they could learn the facts and find that the state only administers the fund. The Union Herald added that it was the manufacturing interest that would benefit through reduced premiums.[4]

The Wade bill, H. B. 697, was rejected by the Committee on Judiciary on February 26. The Parker bill was given a favorable report the same day.[5]

The Parker bill came to the floor of the House on the night session of February 26, providing the House with its first opportunity at floor debate on the issue. The heated arguments continued through the night until a motion was made to end debate and table the measure. Attorney Parker declared to the House, "If you are opposed to workmen's compensation law on principle, then take it out of your platform and kill the bill." Representative Bowie of Ashe, too sick with fever to be out of bed, was nonetheless brought to the chamber and responded bitterly that the measure was drawn in the interest of the corporations and that it violated the fundamental rights of every man who worked with his hands for a living by denying him the right to trial by jury. The Czar of Russia, he shouted, never had greater power than would be conferred upon the three commissioners.[6] Bowie said that he had presented countless claims under the Virginia law and had collected only

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[4] Raleigh Union Herald, January 11, 1923.

[5] North Carolina, House Journal, 1923 Session (Raleigh: Edwards & Broughton Printing Co., 1923), pp. 241, 392.

[6] Raleigh Union Herald, March 1, 1923.

two. He recounted the story of a widow with seven children who had come to his office just before he returned to Raleigh. The Virginia commission had ruled that her husband's death in a mine was due to his own negligence. She and her seven children received nothing. Thunderous applause followed Bowie's speech. After two brief comments from representatives Fountain and Brown, the House voted seventy-three to twenty-eight for tabling the bill.[7]

The interpretations of this episode varied greatly. The Union Herald said:

> When we get a legislature here that is willing to enact a compensation measure equally just to the workers and the corporations, with an insurance feature along the lines of the Ohio law, we will get what labor should have been accorded years ago. Until then we are better off, without an excuse of an alleged "workmen's compensation" law, and we stand pat.[8]

The News and Observer reflected thus:

> On Monday night the House tabled the measure . . . and unless the Senate redeems the failure, we shall go to the people who labor in our mills and factories having made them a plain promise and having failed to keep that pledge . . . .
>
> Cannot the Senate best itself and redeem the pledge to men who toil?[9]

Under the heading "A Victory for the Shyster," the Greensboro Daily News gave its own unique view:

> A magnificent example of the sincerity and honesty of purpose of the present leadership of the Democratic party is furnished by the slaughter of the workmen's compensation bill. The promise of a workmen's compensation law was written in the

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[7] Greensboro Daily News, February 27, 1923.

[8] Raleigh Union Herald, March 1, 1923.

[9] Raleigh News and Observer, February 28, 1923.

> platform; but when the bill was presented it was defeated by Democratic votes on demand of a Democratic leader, on ground that the bill was improperly drawn. Yet it had been presented by a Democratic committee, and presumably was drawn by Democratic lawyers. If the bill was improperly drawn, why did the Democratic house demand that its committee present one of the right sort?
>
> Such action would have enraged a lot of ambulance-chasing, contingent-fee shysters on whose efforts at the polls the Democratic party may count as long as the Democratic party caters to their wishes, but no longer. So the bill was defeated; but no doubt the promise of a workmen's compensation act will be re-written in the next platform as bait to catch such suckers as may exist among the workmen of the state.
>
> Mr. Bowie is said to have made a most eloquent plea based on the ground that the bill as presented to the house would work hardship on widows and orphans. Every lawyer, no matter how rotten his cause, can usually work in an eloquent plea connected with widows and orphans; but seldom have widows and orphans been used in a rottener cause than this one. Widows and orphans are not protected by the absence of a workmen's compensation law from the statute books of North Carolina. Workmen are not protected. Employers are not protected. Nobody is protected except the lowest breed of legal hyenas, who prowl across the battlefields of industry, battering upon the wounded and the dead.
>
> . . . . The bulk of the Democrats are honest men, of course; but their personal integrity does not alter the fact that they have voted to protect a class of crooks of a type that for loathsomeness is hardly surpassed by any element of the underworld--the legal shyster.[10]

In 1925 newly elected governor Angus McLean suggested twenty-three bills for the legislature. All passed except his request for workmen's compensation, the major point of his opening statement to the General Assembly. McLean made no concrete proposals but suggested, as did many of the state's newspapers, that the whole issue was becoming an embarrassment. His statement read:

> The proper regard for those humane principles which would place the burden of injury in the more hazardous occupations, upon the industry itself, instead of upon the injured workman or his family, I believe would justify very serious consideration of this matter. What form this law should take, what classes it should include, how the insurance feature of such a plan may be arranged, and what

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[10]Editorial, Greensboro Daily News, February 27, 1923.

> compensation should be provided, need not be discussed at this time. It is sufficient, perhaps, for the moment, to point out that North Carolina is one of the six remaining states, and I believe, the only great industrial state, that has not adopted a workmen's compensation law as a governmental policy.[11]

The attitude from the beginning of the session was one of "what's the use." The Daily News said, "[workmen's compensation] will probably have the history that all its predecessors have met."[12] Josephus Daniels in the News and Observer said:

> The needed humane and just law will not pass itself. . . . It is more important than any other of the Governor's other recommendations except those looking to wise business conduct of government. It is a stigma on the State not to have a workmen's compensation law.[13]

Two workmen's compensation bills made bashful appearances to the legislature. Stacey Wade reintroduced his bill of the previous session, H. B. 283, and Senators Squires and Johnson presented a compromise bill, S. B. 138.[14] Neither bill was ever discussed in committee, reported out of committee, or ever heard from again.

If the legislators of 1925 can be described as peculiar, the activities of labor were at least equally strange. First, the most liberal of the labor newspapers, the Asheville Labor Advocate, perhaps basking in the profits of increasing subscriptions, dropped its labor position and became the independent Asheville Advocate. No less peculiar was the fact that the Union Herald did not mention workmen's compensation,

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[11] Greensboro Daily News, January 21, 1925.

[12] Greensboro Daily News, January 22, 1925.

[13] Raleigh News and Observer, January 21, 1925.

[14] North Carolina, House Journal, 1925 Session (Raleigh: Edward & Broughton Printing Co., 1925), p. 79; North Carolina, Senate Journal, 1925 Session (Raleigh: Edwards & Broughton Printing Co., 1925), p. 92.

or for that matter, even bother to report on the activities of the General Assembly. The great Samuel Gompers had died in December of 1924. For several months thereafter each issue of the Herald was little more than a bland diet of articles praising their past leader. To say that the Herald was waiting for power to settle in one person before committing itself on issues is perhaps giving too much credit to the power of the A. F. of L. central office. Their actions were, nevertheless, very strange. Finally, the railroad brotherhoods confronted the Democratic administration over the appointment of Frank Grist as the new Commissioner of Labor and lost. The political power of the brotherhoods was clearly on the wane. The Thirty-Fifty Report of the Department of Labor, the first issued under Grist, did not even analyze the railroad workers; the first time in the Twentieth Century that railroads received such little attention. The Labor Department included instead a new section analyzing public service employment.

The 1927 legislators were the same people and demonstrated the same power balance that would detain the law for another session. Fifty-one members of the House were lawyers. The Senate had twenty-nine lawyers. Twenty-two farmers were in the House; three in the Senate. The remaining members of the General Assembly were either business or professional men except for three editors and four preachers. The Senate was ninety per cent college-educated; the House had twenty-five per cent with a high school education or less.[15]

The General Assembly of 1927 "left things much as they were before," most people said. For every major bill that passed, two did not. Among

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[15]Greensboro Daily News, January 6, 1927.

those that did not were an anti-evolution bill, a gun control bill, a state radio project, election and primary law changes, a bill to license automobile drivers, and one to organize a state highway patrol. The SFL's futile request was, besides workmen's compensation, a five-day work week, fifty-five hours long.[16]

Two workmen's compensation bills failed to pass that year. The manufacturer's bill was presented by Claude Currie of Candor, in Montgomery County. Health benefits were liberal but pay provisions were typically low. The bill paid $4,500 for death and $6 to $12 per week for 300 weeks to a limit of $4,500 for permanent injuries. Temporary injuries paid a top percentage of sixty-six and two-thirds. The bill called for a ten-day waiting period, paid $150 for burial expenses, and covered all medical expenses. The Currie bill had an elective insurance provision with the standard three-man commission.[17]

The more seriously considered of the two was the less generous Squires, Townsend, Price, and McLean bill, H. B. 563. The Squires' bill also had a $4,500 maximum but compensated injuries at only a sixty per cent rate, $6 to $12 a week. Burial expenses were only $100.[18]

Union labor claimed that the Squires' bill did not compensate for physical or mental suffering, inconvenience or disfiguration, and made no consideration for the young worker whose prospects in life would

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[16] Greensboro Daily News, February 19, 1927.

[17] North Carolina, Senate Journal, 1927 Session, (Raleigh: Edward & Broughton Printing Co., 1927), p. 203.

[18] Raleigh Union Herald, February 24, 1927.

increase. The argument for disfiguration was a new and rather emotional one. The Herald said:

> The beautiful young woman would receive nothing under the terms of this cold-blooded act, unless her earning capacity has been affected by the injury--her mutilation, disfiguration, her physical pain, her mental agony, her transformation from a lovely young woman of charm and contentment into a despondent, hideous creature. The proposed act would rob her of her fair and just compensation; The act would not compensate![19]

The hearings on the bill were held February 23. C. P. Barringer, president of the SFL, and Tom P. Jamison, president of the Charlotte Central Labor Union, led the opposition and were supported by E. A. Muse, C. W. Fowler, G. E. Preddy, and J. E. Baumberger of the railroad brotherhoods.[20] H. B. 563 received a favorable report and was presented to the House on March 5. The reason for labor's opposition and the method used to defeat the bill was explained in the Official Legislative Report of the railroad brotherhoods. It read:

> [The Squires' bill] was not introduced until within three weeks of the adjournment of the General Assembly, which did not give us sufficient time to give it the thorough consideration necessary when examining the very important kind of legislation.
>
> However, we had sufficient time to discover a great many pernicious features contained in it and a great many loopholes whereby the employer would not be required to pay any compensation, and a great many other ways and places and cases in which the compensation would be very small . . . . This bill was so objectionable that not one of any of the organized crafts would agree to it; but, to the contrary, all were a unit in opposing it.
>
> . . . We found that the employers of labor and the insurance companies were strongly in favor of the bill. It was drawn by the most learned, able and influential lawyers that the cotton mills could employ. They had one of the most powerful lobbies at this General Assembly at work for this bill. However, by sleepless work, we were able to obtain a sufficient number of the members

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[19]Editorial, Raleigh Union Herald, February 24, 1927.

[20]Ibid.

of the Assembly to oppose the measure, so that when the bill came to the floor of the House we had support enough to carry a motion to table the bill.[21]

The two sides of the workmen's compensation issue had played to a stalemate in North Carolina. A new element was needed--new people with a new attitude and a different influence that could move the pawns of social legislation. That new element was the North Carolina Conference for Social Service.

The N. C. C. S. S. had been formed in 1912 by Doctors Clarence Poe, W. S. Rankin, L. B. McBrayer, J. Y. Joyner, Rev. M. L. Kesler and Miss Daisy Denson. Its stated purpose was to improve the social conditions of North Carolina. Before the workmen's compensation issue, the N. C. C. S. S. had been successful in its work with establishing county boards of health and welfare, helping improve prison conditions, and aiding in the welfare of school children. Membership was approximately 110 in 1927.[22] Frank Graham, later president of the University of North Carolina and a U. S. senator, was president of the organization. He was also a close friend of John B. Andrews, president of the AALL.

Their activity in 1927 for workmen's compensation was minimal but was to increase greatly by the next year. The N. C. C. S. S. passed a resolution on the subject at its Fifteenth Annual Conference on February 10, 1927. The same resolution was repeated in the conference of April 18, 1928. That resolution read:

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[21]Official Legislative Report of the railroad brotherhoods, printed in the Raleigh Union Herald, March 24, 1927.

[22]Brief history in the N. C. C. S. S. Manuscripts, North Carolina, State Archives, Letter File No. 1.

> Inasmuch as there is not sufficient protection thrown around workmen in industry and their dependents, and inasmuch as forty-three states in the union have made such a provision, therefore be it
>
> Resolved:
>
> That the North Carolina Conference for Social Services go on record favoring and urging a workmen's accident and compensation act embodying in principle the features now in operation in other states.[23]

The American Association for Labor Legislation also began increased activity in North Carolina. In 1927 it gave mass distribution to a pamphlet Why North Carolina Should Adopt Workmen's Compensation. None of the information stated in the pamphlet was new but its wide distribution aided the cause.

North Carolina was going to have a workmen's compensation law. 1929 was the year. Every person involved had become aware that the law would not pass itself. After the eighth biennial failure in 1927, the supporters of the law had no intentions of waiting until the early days of January 1929 to begin work. The effort was full of steam in 1928.

If the legislatures were not limited then to sixty day sessions, North Carolina might have had workmen's compensation in 1927. In mid-March of 1927, immediately after the close of the session, insurance companies raised employers' liability insurance premiums substantially. The North Carolina branch of the Associated General Contractors saw the dollar-and-cent motivation and added its support to a compensation law. In 1928 the state's lumber interest came to terms.[24]

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[23]Minutes of the Fifteenth and Sixteenth Annual Conferences of the North Carolina Conference for Social Services, North Carolina, State Archives, N. C. C. S. S. MSS., Letter File No. 5.

[24]Cornelius Cochrane, "Workmen's Compensation Challenges Somnambulic South," American Labor Legislation Review, XVIII (June 1928), 265-66.

T. A. Wilson, new president of the North Carolina SFL, made a direct appeal to John B. Andrews of the AALL for active support. The 1928 SFL convention spent three days with AALL representative Cornelius C. Cochrane discussing the theory and operation of a compensation law. Although the labor bill presented in the next General Assembly was to be much higher in its demands, the workmen's compensation resolution coming out of the August meeting agreed to accept a seven day waiting period, a limit to medical care, and a scale of fifty per cent of wages.[25]

The AALL at its Twenty-First Conference in 1928 in Washington agreed to dedicate itself to bringing in the last five noncompensation states. The American Labor Legislation Review for 1928 and 1929 contained a large number of articles on the South and Southern legislation.[26]

The academic community had several members in North Carolina playing an active role in both the AALL and the N. C. C. S. S. Among these were Thomas W. Holland and Dean D. D. Carroll of the University of North Carolina; R. W. Henninger, professor of industry at North Carolina State; and Calvin B. Hoover of Duke.

Heavy pressure was exerted to align all academic and reform groups behind a compensation law. Calvin B. Hoover, Frank Graham, and John B. Andrews tried to bring the North Carolina League of Women Voters into the battle. Mary O. Cowper, president of the League wrote to Graham December 8, 1928, that although her group was "greatly interested,"

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[25] Greensboro Daily News, August 4, 1928.

[26] "The Laggard States," American Labor Legislation Review, XVIII (March 1928), 39.

they did not feel they could do anything about it.[27]

On January 6, 1929, the SFL Executive Committee met in Greensboro and agreed to put its total effort toward the passage of a law. Alfred Hoffman, secretary of the Piedmont Organizing Council, a part of the SFL, had just returned from Chicago and the Twenty-Second Session of the AALL. There John B. Andrews agreed to prepare a bill for labor. Hoffman then returned to the state and began an educational campaign on workmen's compensation.[28]

J. E. Baumberger, representative of the railroad brotherhood suggested opposition to a workmen's compensation law if it changed the statue of railroad men. This continuing obstinancy from the brotherhoods produced this telling cartoon in the Raleigh News and Observer:

Figure 1. Political Cartoon of 1929

[27]Letter, Mary O. Cowper to Frank Graham, December 8, 1928, North Carolina, State Archives, North Carolina Conference for Social Services MMS., Letter File No. 5.

[28]Raleigh Union Herald, January 17, 1929.

While the AALL prepared labor's bill, the Industrial Committee of the N. C. C. S. S. prepared a bill that was presented to the Conference on January 25, 1929. The bill had been drawn up principally by Calvin Hoover, who also had the assistance of Andrews and the AALL, and the two bills were quite similar. Graham appointed Hoover, Claude Currie, author of a bill at the previous session, and Gilbert Stephenson to test all channels for legislative sponsors for the bill. Hoover stated that the Conference would accept no compromise that materially weakened the bill.[29]

Frank Graham set forth the Conference's position and demonstrated its method in a letter of January 30, 1929. It read:

> By the way, one of these committees has been working on a workmen's compensation act. This committee has studied the question from all angles with due considerations of all the interest involved. I believe that the bill they have worked out is a fair bill . . . . I wish very much that you would write [to Robert M. Hanes, sponsor of the N. C. C. S. S. bill] your support of a reasonable workmen's compensation act . . . . we need a workmen's compensation act both for labor and for business, but we need a fair one, and we believe that this is a fair one on the basis of thorough study.[30]

The hard work of arranging a compromise now began. Stacey Wade, Insurance Commissioner and chairman of the Legislative Committee on Insurance, was O. Max Gardner's leader of an unofficial committee to develop a compromise bill. In the meantime, the N. C. C. S. S. had obtained the agreement of all parties to a skeleton bill. Of the seven bills that were circulating through the legislature, the unofficial

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[29]Minutes of meeting, January 25, 1929. N. C. C. S. S. MSS. Box 5.

[30]Letter, Frank Graham to Dr. Howard A. Rondthaler, January 30, 1929, N. C. C. S. S. MSS., Letter File No. 5.

committee finally narrowed to consideration of the two extremes, the manufacturers and labor's bills. These two were printed; the compromise remained unprinted until needed.[31]

On January 22 at the Carolina Hotel in Raleigh, T. A. Wilson and J. W. Rideoutte, top officials of the SFL, met with Stacey Wade and representatives of manufacturing including Clyde Hoey and Hunter Marshall. It was agreed that the compromise bill would be presented at a joint session of the Insurance Committees of the House and Senate on February 5. The railroad brotherhoods withdrew from the issue. Their statement to Wilson read:

> We, the resolutions committee, Legislative Board, Brotherhood of Railroad Trainmen, . . . do hereby go on record as favoring any compensation bill that the Federation of Labor may see fit to have introduced at this General Assembly that would be favorable or satisfactory to the State Federation of Labor, that will exempt the transportation brotherhoods.[32]

Opposition existed to the bill but it was scattered and disorganized. The committee hearings produced a strangely assorted crew. Roy Martin of Charlotte, a maverick in the labor movement, asked for more time to study the bill. Colonel T. L. Kirkpatrick, attorney, president of the Charlotte Chamber of Commerce, and creator of wild schemes, opposed the whole concept of workmen's compensation. Lawyer J. P. Flowers reappeared, and in the only sane testimony of the day, claimed that the bill was inadequate for labor.[33] The Committee

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[31] Raleigh Union Herald, January 31, 1929. Table 2 of the Appendix to this thesis list the major provisions of the more important bills of 1929.

[32] Raleigh Union Herald, January 24, 1929.

[33] Keech, Workmen's Compensation in North Carolina, p. 32.

returned the compromise bill approved.

On Friday, February 15, 1929, Governor Gardner went to the legislature to make a personal appeal for the passage of the law. He told the legislators to work it out irrespective of "special interest and partisan politics."[34]

The General Assembly was alive with pyrotechnics for the last brief stand of the opposition on February 26. Senator Galloway of Brevard, calling himself the "true friend of the working people" and calling the A. F. of L. "traitors and deceivers of the working class," led the opposition.[35] He proposed amending the law to such high compensation--seventy-five per cent of weekly wages to a maximum of $10,000--that the bill could not have been passed. Senator Brawley of Durham brought the first racial note into the debate. An uneducated Negro boy would receive the same payment for injury as a white college boy doing summer work. Brawley then brought several maimed workers into the chamber and demonstrated how little each would receive under the workmen's compensation law.[36] Sponsors of the bill, fearful that these attacks would damage the bill's prospects, had Senator T. L. Johnson move successfully for adjournment.[37]

The bill's movements can be summarized as follows: S. B. 83,

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[34] Greensboro Daily News, February 16, 1929.

[35] Raleigh Union Herald, March 7, 1929.

[36] Greensboro Daily News, February 27, 1929.

[37] Raleigh Union Herald, March 7, 1929.

a compensation bill by Senators Canaday and Haywood, was submitted to the Committee on Insurance on February 22. On February 14, this bill was returned unfavorably, but the committee had attached the compromise bill as a recommended substitute. Senator Clark, opposition leader, had the bill recommitted, but it quickly returned on February 18. Four hundred copies were ordered printed. On February 24, Senator Melville Broughton spent nearly an hour explaining the measure to the Senate. The next day it passed by a vote of forty to six.[38]

On March 3 the bill, now called S. B. 83-H. B. 1199, was in the House. It was given special priority on the calendar and a five-hundred-copy printing. Third reading was passed on March 6. The following day the bill returned to the Senate for concurrence on the House amendments. Broughton moved that it be accepted by oral vote. The North Carolina General Assembly thereupon passed workmen's compensation on March 7, 1929.[39]

The state was justly proud of its law and not a little relieved that it finally had one. Newspapers spread editorial happiness for several weeks thereafter. The North Carolina reform community congratulated itself. Frank Graham wrote to Josephus Daniels:

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[38]North Carolina, Senate Journal, 1929 Session (Raleigh: Edwards & Broughton Printing Co., 1929), pp. 46, 126, 154, 224, 299.

[39]North Carolina, Senate Journal, 1929 Session, p. 379. Tables 3 and 4 of the Appendix to this thesis compare the final 1929 law to those in other Southern states (Table 3) and selected states outside the South (Table 4).

> Your editorials were a great help in winning public support for this bill. The bill as it is now stands as the best in the whole Southern area and is one of the best in the United States.[40]

Dr. Graham was equally proud of his own organization's efforts.

> This year we concentrated practically all our interest and activity on the workmen's compensation act, perhaps to the neglect of other things. The little contribution, however, that we were able to make to the many forces juncturing in the passage of the best workmen's compensation act in the Southern states, I think, justifies this concentration on one thing during the past year.[41]

In the next several years thousands of people would be injured in North Carolina industry. It was these people and their families who would be most thankful for the new law.

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[40]Letter, Frank Graham to Josephus Daniels, March 8, 1929, N. C. C. S. S. MSS, Letter File No. 5.

[41]Letter, Frank Graham to William MacNider, March 22, 1929, N. C. C. S. S. MSS, Letter File No. 5.

SUMMARY AND CONCLUSIONS

Workmen's compensation was a legislative epic in the North Carolina General Assembly. For over seventeen years the workers, businessmen, and government officials of North Carolina struggled with this frustrating measure; frustrating not in the inability to convert opposition but frustrating because there was no opposition. All sides wanted a law, but all sides disagreed as to what it should contain.

The state government was, despite an assumed pro-management attitude, fair and independent in its support of the law. At least six governors and many major officials, the most important of these being James R. Young, supported a fair law. The manufacturers of North Carolina needed no greater motive than dollars and cents. The state's businessmen paid the highest employers' liability premiums in the nation by 1925.

Labor, at the beginning of the debate, had just succeeded in forming a State Federation of Labor. For the first several sessions the only power in labor was the railroad brotherhoods. This group fought workmen's compensation for fear that a low-paying law might supersede the liberal federal law. However legally illogical this may seem, it was a serious factor because labor had yet to receive fair treatment in the courts of the United States. It was fortunate that the state respected the political and economic power of the brotherhoods enough to defeat the first measures which were not adequate to the needs of a growing industrial state. From the session of 1917, labor's power moved

more into the hands of those unions affiliated with the American Federation of Labor. This group supported workmen's compensation in theory but was not willing to accept just any law. If the measures did not pay, the combined power of the State Federation of Labor and the brotherhoods was enough to defeat it. If it was too generous, the power of the textile and manufacturing groups would defeat it. Thus it would be for many sessions--a see-saw ride.

Was labor right in preventing the enactment of a law that seemed to them inadequate? Were they not sacrificing the well-being of the poorer and less powerful mill workers? The answer depends, of course, on one's opinion of capital and labor. It is difficult to measure the mental attitude of a supposedly individualistic group that could with such ease turn to Communist leadership in 1929. But it is true that labor had become used to living off its own resources. "You can always go back to the farm," they would say. To have accepted a low compensation law in 1919 would have meant not "some" payment to those injured in the ten years to 1929, but inadequate payments for those injured from 1919 to 1969.

Perhaps an even more pertinent problem was the conspicuous absence of the academic and reform community until much too late in the struggle. North Carolina had such people and they were effective in education, child labor, and governmental reforms. Their support, particularly in the period from 1917 to 1921, was sorely missed.

The final and most important question relates to North Carolina's "guilt by association." It has been assumed that because the measure passed the North Carolina Legislature at such a late date, the state was

acting in the typically individualistic, conservative, anti-labor, Southern manner. Obviously Mississippi, South Carolina, and Florida, from what information is available, were of this character. Similarly the laws in Alabama, Georgia, Tennessee, and Virginia were of such a stingy nature as to be obviously pro-capital bills. Only Texas, an oil-rich and Western-oriented state; and Louisiana, whose law reflected the Napoleonic Code more than the common law,[1] had equal or better bills in the South.

North Carolina was late passing the law because on this issue, the two sides were amazingly well-balanced. The textile group got its support for low-paying bills mostly from the Piedmont. The workers were able to defeat them by an alliance of liberal Democrats from the Asheville area and northeast Coastal Plain plus a few who actually opposed the theory of workmen's compensation. North Carolina labor, it appears, might have been a more viable factor, before Gastonia and 1929, than has been previously supposed. The state political community did avoid offending labor. For a Southern state that was no small amount of power.

From Star Dust to stock market crash to Chicago's St. Valentine's Day Massacre, and sound movies, 1929 was a year in which things happened. North Carolina made the year memorable for her people by passing a good workmen's compensation law.

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[1]Marian Mayer, Workmen's Compensation Law in Louisiana (Baton Rouge: Louisiana State University Press, 1937), p. 6.

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APPENDIX

TABLE 1

EFFECTIVE YEAR OF WORKMEN'S COMPENSATION ACTS IN THE UNITED STATES[a]

Year	States
1908	United States
1911	Wisconsin, Nevada, New Jersey, California, Washington
1912	Kansas, New Hampshire, Ohio, Illinois, Massachusetts, Michigan, Arizona, Rhode Island
1913	Texas, West Virginia, Minnesota
1914	Connecticut, Oregon, Iowa, New York, Maryland, Nebraska
1915	Louisiana, Wyoming, Montana, Vermont, Hawaii Terr., Alaska Terr., Colorado, Indiana, Oklahoma
1916	Maine, Pennsylvania, Kentucky
1917	South Dakota, Utah
1918	Alabama, Idaho, Delaware
1919	Tennessee, Virginia, North Dakota
1920	Nebraska
1921	Georgia
1926	Missouri
1929	North Carolina
1935	South Carolina, Florida
1941	Arkansas
1944	Mississippi

[a] Source: Jones, Digest of Workmen's Compensation Law, p. xii.

APPENDIX

TABLE 2

COMPARISON OF WORKMEN'S COMPENSATION LAWS PRESENTED TO THE 1929 GENERAL ASSEMBLY[a]

Item	N.C.C.S.S. Bill	Capital's Bill	Labor's Bill	Compromise Bill	Enacted Bill
Waiting Period	7 days	14 days	7 days	7 days	7 days
Medical	All paid	30 days	All paid	10 weeks	10 weeks
Temporary Injury	60% of weekly wage	50% of weekly wage	66 2/3% of weekly wage	60% of weekly wage	60% of weekly wage
Permanent Injury	$6-18, no limit	$6-12, 300 weeks, max. of $4,500	$8-20, 300 weeks, max. of $7,000	$7-18, 300 weeks, max. of $6,000	$7-18, 300 weeks, max. of $6,000
Death	% varies to $6,000	$3,500	$7,000	$6,000	$6,000
Burial	$150	$100	$200	$125	$200
Administration	All bills provided for three-man commission and election.				

[a]The information in this table is approximately the same as in J. Maynard Keech, Workmen's Compensation in North Carolina, 1929-1940 (Durham: Duke University Press, 1942), Table 3, p. 29; however, some corrections and alterations have been made.

APPENDIX

TABLE 3

COMPARISON OF WORKMEN'S COMPENSATION ACTS IN THE SOUTH IN 1929[a]

Item	No. Car.	Alabama	Georgia	Louisiana	Tennessee	Texas	Virginia
Minimum Employees	5	16	10	varies with industry	5	3	11
Waiting Period	7 days	14 days	7 days	7 days	7 days	none	10 days
Medical	70 days	60 days	30 days	to $250	30 days	28 days	60 days
% of Wage	60%	50%	50%	65%	50%	60%	50%
Maximum Payment	$6,000	$5,000	$5,000	Large Variations	$5,000	Payment for 400 weeks	$4,500
Burial	$200	$100	$100	$100	$100	$100	$100
Administration	Commission	Court	Commission	Court	Commission	Commission	Commission

[a]Source: F. R. Jones, Digest of Workmen's Compensation Laws in the United States (New York: Association of Casualty and Surety Executives, 1929).

APPENDIX

TABLE 4

COMPARISON OF NORTH CAROLINA'S WORKMEN'S COMPENSATION ACT WITH THOSE OF SELECTED STATES OUTSIDE THE SOUTH IN 1929[a]

Item	No. Car.	Calif.	Missouri	Ohio	New York	W. Va.	Wisconsin
Minimum Employees	5	all	6	3	4	all	3
Waiting Period	7 days	7 days	3 days	7 days	7 days	7 days	7 days
Medical	70 days	none	to $250	to $200	all	to $800	90 days
% of Wage	60%	65%	66 2/3%	66 2/3%	66 2/3%	66 2/3%	65%
Maximum Payment	$6,000	$5,000	varies	$6,500	varies too greatly for comparison		
Burial	$200	$150	$150	$150	$200	$150	$200
System (All Have Commissions)	elective	compulsory	elective	compulsory	compulsory to some	compulsory to some	elective

[a]Source: Jones, Digest of Workmen's Compensation Laws.

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