Interstate Compacts on Labour Legislation in the United States

by

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At various times in the past attempts have been made in the United States to secure greater uniformity of labour legislation among the component States of the Union. Among the methods tried in recent years is the device known as the interstate compact. This may be briefly defined as a formal agreement between two or more States on some matter of mutual concern, requiring ratification by the legislatures of the participating States and sanction by the Congress of the United States. The system has been in operation for a long time for such matters as boundary disputes, irrigation, crime control, etc., but its application to labour legislation is still only in its early stages. In fact, one compact only (on the minimum wage) has as yet been ratified by the necessary number of States, and is now before Congress for approval. Although the movement is still in its infancy, its purpose seems to be sufficiently interesting for a description of it to be given in the International Labour Review. *The author of the following article has been closely connected with the labour compact movement from the outset, as member of various interstate commissions and committees on labour compacts, and in particular as Chairman of the committee which drafted the substantial section of the Minimum Wage Compact.*

OF PARTICULAR significance to federated countries is the movement recently initiated in the United States of America to utilise the device known as an interstate compact as an agency for securing greater uniformity in labour legislation among the several States of that country.

Various organised attempts have been made in the United States in the past to reach this objective. The Conference of Commissioners on Uniform State Laws has, since its inception in 1892, endeavoured to bring about the general adoption by

the separate States of uniform legislative measures. The attention of the Conference has, however, been directed more to legislation dealing with commercial transactions than to labour legislation. The main achievement in that field is the model child labour law drafted by the Conference. Although this has influenced legislation in a number of States, it has not been adopted in its entirety by a single jurisdiction.

The International Association of Governmental Labour Officials of the United States and Canada is another official body that is interested, among other things, in bringing about higher standards for labour legislation and greater harmony in the existing labour laws of the various States. A private organisation with somewhat similar objectives is the American Association for Labour Legislation. The American Standards Association, a semi-public organisation, works to promote the adoption by the States of uniform standards for industrial health and safety regulations. Certain organisations, as the International Association of Industrial Accident Boards and Commissions, are interested in uniformity in one particular type of labour legislation.

Through the labour provisions of the Codes of Fair Competition adopted under the National Industrial Recovery Act of 1933, general uniformity in basic standards of labour legislation, in such matters as child labour, hours of employment, and minimum wages, was established for a temporary period throughout the country. This was terminated, in so far as legal sanctions are concerned, by the decision of the United States Supreme Court in the Schechter case [1] in May 1935, invalidating the codes. The prospect of Federal legislation, such as that represented by the National Child Labour Laws which were annulled by opinions of the United States Supreme Court [2], is rendered still more uncertain by that decision.

Amendment of the Constitution to promote the enactment by Congress of social welfare legislation has been envisaged by some. It is urged as the logical answer to the present anomalous situation, where, within the confines of one nation, forty-eight separate States enact, independently of one another, labour legislation affecting industrial activities which have long

[1] A. L. A. Schechter Poultry Corporation et al. *v.* United States. Supreme Court of the United States, 27 May 1935. Cf. Hoosac Mills *v.* United States. Supreme Court of the United States, 6 January 1936.

[2] Hammer *v.* Dagenhart, 247 U.S. 251 (3 June 1918), and Bailey *v.* Drexel Furniture Company, 259 U.S. 20 (15 May 1922).

ceased to be co-terminous with State boundaries. Solution of the problem by constitutional amendment, however, appears problematic for some time to come, in view of the natural reluctance of the States to surrender their prerogatives to the Federal Government and in view of the fear on the part of some that such action would tend eventually to the destruction of local self-government. [1]

Federal grants to the States have for many years been employed to secure a certain basic uniformity of standards in such matters as agricultural [2] and vocational education and the training of teachers for vocational schools. The possibility of such methods as a means of securing certain minimum standards for labour legislation has been suggested. Such a proposal was considered in connection with the Federal Social Security measure, and was in fact employed in connection with the old-age pensions provision of that Act. The method which was utilised for setting up a system of unemployment compensation —the use of the Federal taxing power—represents still another device which the Federal Government may use in inducing the States to enact uniform legislation. Such methods as applied to labour legislation have still to meet the test of constitutionality.

The Interstate Compact Movement

Doubt as to the constitutionality of some of the methods proposed to attain uniformity in State labour laws, and the unsatisfactory results secured by other attempts, have given impetus to the interstate compact movement.

In general terms, an interstate compact might be defined as a formal agreement or contract of durable nature between two or more States regarding some matter or matters of mutual concern, which agreement requires for its effectiveness ratification by the legislatures of the participating States, and for its validity, sanction, either expressed or implied, by the Congress of the United States. How does the compact differ from the

[1] Since the Schechter decision, there has been a movement for a constitutional amendment authorising the enactment by the Federal Government of labour and social welfare legislation. The American Federation of Labour at its Convention in Atlantic City, October 1935, endorsed such a proposal.

[2] The recent decision of the Court in the Hoosac Mills case (see *supra*), invalidating the Agricultural Adjustment Administration, has raised questions as to the validity of the grant-in-aid method. There is this distinction to be noted, however. Whereas the A.A.A. authorised the Federal Government to make regulations governing agricultural activities within the States, the grants for educational purposes cited left control to the States.

multiform acts of agreement which are constantly taking place between the States—extradition of criminals, regulation of interstate traffic, border patrol arrangements ? Transactions of this nature are of almost daily occurrence. They represent a form of interstate agreement but they are not compacts. The distinction is that one is an act temporary in character, dealing with a special situation, and based on mutual arrangements requiring no sanction beyond the consent of the jurisdictions involved. The other is a formal contract, binding in effect, permanent in type, involving a continuing obligation, and requiring not only legislative action by the participating States, but Congressional approval.

Agreements of this nature have been negotiated between the separate States of the United States for many years. The compact method, in fact, antedates the Articles of Confederation. The American colonies entered into formal agreements with one another which were subject to confirmation by the Crown. These agreements served as precedent for the subsequent compacts between the States. The history of the United States started in 1789 with a compact known as the Constitution of the United States.

Official recognition of the interstate compact and sanction for its use is contained in the Constitution itself. There it is provided that :

> No State shall enter into any treaty, alliance, or confederation ....
> No State shall, without the consent of Congress, ... enter into any agreement or compact with another State. [1]

This authorisation of the interstate compact, provided Congressional sanction is secured, has been the basis for the various agreements of this nature entered into between the States subsequent to the adoption of the Constitution. It has been suggested that the authorisation was given in negative form in order to express the limitations imposed upon its exercise. In this connection it has been pointed out by students of constitutional law that the authorisation granted for State action has probably been considerably minimised by its inclusion in a section dealing with restrictions upon the States.[2] This may be one explanation for the somewhat limited use in the past of the compact clause of the Constitution.

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[1] United States Constitution, Article 1, section 10. A similar provision appears in the Articles of Confederation.

[2] FRANKFURTER and LANDIS : " The Compact Clause of the Constitution — A Study in Interstate Adjustments ", in *Yale Law Journal*, Vol. 34, May 1925, pp. 685-758.

At first, interstate compacts were utilised mainly to settle boundary lines and adjust disputes between States regarding the cession of territory. Other and more recent forms of compacts between the States have to do with such matters as river and harbour development, irrigation policies, the control of navigation on bodies of water in which two or more States have a common interest, conservation of natural resources, regulation of public utilities, and crime control. In all, more than 70 compacts have been negotiated between the States, and 34 have become fully effective through ratification by the requisite number of States.

The methods employed in developing interstate compacts have varied considerably in the past. Certain formalities, however, are essential. There must in any case be favourable action by the legislatures of the participating States, and there must be Congressional consent in order to make a compact effective. In some instances the assent of Congress has been secured prior to formal agreement between the States. In other instances this assent has followed State action. Again, Congressional action may both precede and follow that taken by the States. There is the further possibility that such consent, although not formally given, is implied by other Acts of Congress.

The Application of Compacts to Labour and Industrial Problems

The application of interstate compacts to labour and industrial problems is a recent development. It is a part of the nation-wide movement for greater uniformity in labour legislation. Efforts to achieve uniform labour laws have in the past been represented by attempts to bring about the voluntary adoption of an identical measure by separate States acting independently. Comparatively little success has attended such efforts.

Until 1933, no definite attempt had been made to secure between groups of States with common industrial problems agreement upon legislative regulations governing labour and industry through interstate compacts. Suggestions had occasionally been advanced by students of constitutional law regarding the possibility of utilising interstate compacts as a means of promoting uniformity in legislation between the States. No practical application of these suggestions was, however, attempted for a number of years.

In 1931, President Roosevelt, then Governor of the State of New York, invited the chief executives of the Eastern industrial States to meet with him in Albany and assist in formulating a plan for a uniform system of unemployment compensation. At this Conference, which opened on 23 January 1931, he suggested that further conferences be called by the Governors represented to deal with other forms of labour legislation. Acting upon this suggestion, Governor Pinchot of Pennsylvania called the first Eastern Interstate Conference on Labour Legislation, which met in Harrisburg, Pennsylvania, in June of that year.

This meeting in Harrisburg was followed by a second Interstate Conference on Labour Legislation, which was held in Boston in January 1932, with the Governors of several Eastern States in attendance. Utilisation of the interstate compact for the purpose of harmonising State labour laws was discussed at this Conference on the suggestion of Governor Winant of New Hampshire. Governor Winant was appointed Chairman of a Committee of the Conference to consider the form for a labour compact. Serving with him on this Committee were Professor Frankfurter of the Harvard Law School, and Commissioner Smith, of the Massachusetts State Department of Labour and Industries. The actual drafting of the compact form was referred by the Committee to Professor Landis of the Harvard Law School.

It was shortly after this Conference that the Massachusetts Legislature adopted a Resolve [1] providing for the creation of a Commission on Interstate Compacts affecting Labour and Industries. This action was based on a resolution introduced by State Senator Henry Parkman, Jr., and Representative Christian Herter, in answer to the suggestion from the Governor that Massachusetts should suspend or repeal some of its labour laws in view of competition from other States with lower legal standards. The joint authors of the Resolve recommended that, instead of any repeal or weakening of the laws, effort should be made, through negotiation with industrially competing States, to secure greater uniformity in the labour laws of those States.

The Commission created under this Resolve was authorised to negotiate with similar Commissions in the other New England States and with New York, New Jersey, and Pennsylvania—or

[1] Massachusetts Resolves, Ch. 44, 1933.

with any of the States mentioned—in an effort to secure greater uniformity in their labour laws, with particular reference to legislation regarding wages, hours of labour, and the conditions and standards of employment. Senator Parkman, one of the joint authors of the Resolve, was appointed Chairman of the Massachusetts Commission.

The United States Secretary of Labour expressed keen interest in the proposal; and, in response to an invitation from the Massachusetts Commission, submitted a number of suggestions as to the field of possible accomplishment for such an undertaking. These included the following recommendation:

> The first effort of the Commission should be to get uniform State legislation consolidating the gains that have been achieved by the N.R.A. Codes.... Therefore I strongly recommend that each of the New England and Atlantic States pass legislation abolishing child labour, providing for compulsory minimum wage, and eliminating night work by women.[1]

On 21 August 1933 Senator Parkman, Chairman of the Massachusetts Committee, wrote to Governor Winant asking his co-operation, and suggesting the appointment of a similar Commission for New Hampshire to negotiate with the Massachusetts Commission.

The Interstate Conference on Labour Compacts

On the recommendation of Governor Winant, a conference of the Governors of the New England States was held in Boston on 10 October 1933 to discuss the matter of appointing commissions on interstate compacts in these States. This conference was attended in person by the Governors of Maine, Massachusetts, New Hampshire, and Rhode Island, and by representatives of the Governors of Connecticut and Vermont. A resolve unanimously adopted by the conference provided for the appointment of commissions on interstate compacts by the Governors of the New England States.

As a result of this conference and at the invitation of the Massachusetts Commission, Governor Winant, on 29 November 1933, appointed the New Hampshire Commission on Interstate Compacts affecting Labour and Industries. Similar commissions were appointed by the Governors of Rhode Island and Maine.[3]

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[1] Letter from Secretary of Labour Frances Perkins to Hon. Henry Parkman, Jr., 12 September 1933.

[2] Subsequently, commissions were appointed in New York, Connecticut, Vermont, and Maryland.

The Governor of Connecticut, and later the Governors of New York, Pennsylvania, and New Jersey, appointed representatives or delegates to attend a Joint Conference on Interstate Compacts and negotiate with the commissioners and delegates from the other States. The Chairman of the Massachusetts Commission, Senator Henry Parkman, Jr., was elected Chairman of the Joint Conference, representing the States participating in compact action. This Joint Conference was later designated the Interstate Conference on Labour Compacts.

As a means of initiating preliminary negotiations prior to the convening of the State Legislatures, a meeting of delegates of the participating States was held in Boston on 14 December 1933 to approve a definite programme for action. Each State was represented at this meeting by an official designated by the Governor or by the Compact Commission of that State.

The recommendations formulated by this committee were accepted by the Interstate Conference at the meeting in Boston, January 1934. The programme of work agreed upon by the Conference was divided into two parts : first, that calling for early action and including such matters as minimum wage, child labour, hours of work, night work, industrial home work ; and second, the programme for long-range action and including such matters as workmen's compensation, unemployment insurance, the regulation of fee-charging employment agencies, and the adoption of regulations for the health and safety of employees.

One of the first recommendations adopted by the Interstate Conference was that the Congressmen of the States represented in the Conference group be requested to ask Congress to grant approval by law in general terms to the making of compacts by the States concerning labour and industrial legislation.

The resolution drafted provided for Congressional consent to the formation of a labour compact or compacts between the participating States. It provided further that the President of the United States might be invited to appoint a representative of the Federal Government to attend compact negotiations between the States ; also that no compact or agreement should be binding upon any State party thereto unless and until it had been approved by the legislature of each of the States whose assent was contemplated by the terms of the compact, and by the Congress of the United States. A measure embodying these provisions passed the House of Representatives at the 1935

session of Congress, but was not reached in the Senate. It is pending before the present session.[1]

The Minimum-Wage Compact

Minimum-wage-fixing machinery was selected by the Interstate Conference on Labour Compacts as the initial subject for compact action. There were several reasons for this selection. The campaign during the depression against sweat-shop wages had focussed public attention upon the subject, and made concerted action by the States seem advisable to aid in checking the practice of unscrupulous concerns in migrating from a State with good labour laws and fair standards to another with less adequate protection. The fact that several States in the Conference group already had minimum-wage laws made it appear that a compact of this nature would be comparatively easy to negotiate. The further fact that the proposed compact was of the open type made it seem possible to effectuate the compact within a reasonable time. For this compact was to become operative, subject to Congressional approval, when ratified by the legislatures of two of the signatory States, at the same time leaving it free for any and all of the States that desired to do so to adhere to the compact.

This compact on minimum-wage standards suggests one of the ways in which an interstate compact on labour legislation may be extremely effective, that is, in bringing about greater uniformity in existing labour laws between the States. It should be noted that this compact does not establish new standards, but rather attempts to bring a larger number of States into agreement on standards that have already been adopted in certain of the States.

As mandatory minimum-wage legislation of the type based on the cost of living had been declared unconstitutional by the United States Supreme Court [2], it was felt advisable to adopt the fair-wage type of legislation as model for the compact. This type of minimum-wage legislation is based, not primarily on the cost of living, but rather on a prohibition against an unfair and oppressive wage. The standard Bill sponsored by the National Consumers' League and enacted in 1933 [3] by the

[1] H.J. Res. 146, 74th Congress, 1st Session.

[2] Adkins *v.* Children's Hospital (United States Supreme Court, 9 April 1923), 261 U.S. 525.

[3] Massachusetts enacted similar legislation in 1934, meeting the requirements of the Minimum Wage Compact.

Legislatures of New York, New Hampshire, New Jersey, Connecticut, Illinois, and Ohio was accepted in its general provisions, with certain perfecting amendments, as basis for the compact.

The compact as drafted consists of three titles. Title I is the preamble explaining the general policy and intent. It states the reason for the compact and specifies the objective—to provide uniform minimum standards affecting labour and industry. It stipulates that when the compact has been ratified by the requisite number of States and approved by Congress, it shall be effective as a law in each of the compacting States. An important proviso of this title is intended to prevent the compact from being used as an argument against State labour legislation. This proviso is to the effect that nothing contained in the compact shall be construed as interfering with laws already in force in any of the compacting States which establish standards equivalent to or above those set forth in the compact; or to prevent or discourage the enactment of additional laws establishing similar or higher standards; or to affect any laws concerning conditions of employment that are not in conflict with the compact provisions or that deal with subjects not included in its scope.

Title II deals with the machinery for administering the compact and with the general provisions for making it effective. It provides for the enactment by each of the participating States of laws to meet the required standards, and for the administration and enforcement of these laws by the appropriate State agencies; also for annual reports by these agencies concerning the operation of the compact and of the laws relating to it. It provides for a compact commission in each State and for an interstate commission representing the group of compacting States. It contains provisions regarding the amendment of the compact, the withdrawal of member States, and the adhesion of additional States to the compact. It is intended that titles I and II shall be part of every compact on labour legislation.[1]

Title III of the compact is concerned with minimum-wage legislation. It establishes general principles already embodied in existing mandatory fair wage laws. It prohibits the payment to women and minors of an unfair and oppressive wage. It provides for an administrative agency in each State with authority to investigate the wages of women and minors; to appoint wage boards, upon which employers, employees, and the public

[1] For further details regarding the provisions of title II, see below under the heading " Procedure in Labour Compacts ".

are equally represented ; to enter wage orders, after a public hearing, based on the recommendations of the wage board ; such orders to be directory or recommendatory for a definite period, after which they may be made mandatory and carry a penalty for non-compliance.

There is further provision that the administrative body shall have authority to issue special licences to employees who, by reason of physical or mental condition, are incapable of earning the minimum fair-wage rate established for their occupation, and also to take assignment of wage claims at the request of employees paid less than the minimum wage under a mandatory order and to bring legal action to collect such claims.

Employers are required to keep specified records, including the names, addresses, occupations, hours, and wages of women and minors in their employ ; to permit the inspection and transcript of such records ; to furnish, upon request, sworn statements of the same ; and to post and maintain the notices regarding wages and hours issued by the State administrative agency. There is provision for Court appeal, and also provision that existing wage orders and decrees in any of the signatory States having such regulations shall remain in effect until new wage orders covering the same occupations have been entered and become operative.

It should be noted that such legislation does not fix a specific minimum rate, but rather establishes the machinery by which the individual States may, through the agency of wage boards for separate occupations, set up minimum fair-wage rates for women and minor employees in those occupations. It will be noted that this does not result necessarily in identical minimum rates in the different signatory States. It does, however, establish the means for a far greater approach to uniformity than existed prior to the compact. It further makes it possible for the administrative bodies in the co-operating States to bring about reasonable uniformity in practice and procedure.

In recognition of the service of Governor Winant in furthering the compact plan, the Minimum-Wage Compact was signed in Concord, New Hampshire, on 29 May 1934 by representatives of the Governors of seven States.[1] On 30 June of that year the Massachusetts Legislature ratified this compact, and during

[1] Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and Pennsylvania.

the same session it enacted the fair-wage legislation required to meet the compact standards. On 27 May of the following year the New Hampshire Legislature ratified the compact, [1] thus making it effective between these two States as soon as Congressional consent is given.[2]

It is significant that the States joining in this compact include Massachusetts, which was the first State in the country to enact minimum-wage legislation, and New Hampshire, the first State to enact a mandatory fair-wage law modelled on the standard measure sponsored by the National Consumers' League. Beyond these considerations mentioned, there is a broader significance in this action in selecting minimum-wage legislation for the initial compact. It signifies the revival of interest in minimum-wage laws as an agency in promoting social and industrial well-being.

The Child Labour Compact

Child labour legislation was the subject next selected for compact action. The widespead interest in protection of children from industrial exploitation, the variation in the existing State laws, and the success attending the child labour provisions of the N.R.A. codes made it appear that this would be a matter on which early agreement could be reached. Question immediately arose, however, as to the form the proposed compact should take. Should it represent model legislation, embodying desired ideals, or should it be based upon the best existing legislation ? Again, with respect to scope, should the compact deal with the broad field of child labour problems, or should it be limited mainly to activities of an interstate character ?

It was eventually decided that, as one of the objectives of interstate labour compacts is to lessen unfair competition between the States based on labour differentials involving the industries of these States, the compact should be concerned for the most part with activities affecting interstate competition.

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[1] New Hampshire H.B. 39 of 1935.

[2] A Resolve providing for Congressional approval of the minimum-wage compact passed the House of Representatives in the summer of 1935 but was held up in the Senate in the closing days of the session. It was re-introduced in 1936 (H.J. Res. 321, 74th Congress, 2nd Session) and passed the House on 20 January 1936. Action on it has since been held up pending the decision of the Supreme Court on the Minimum Wage Law. The constitutionality of mandatory fair wage legislation of the type specified in the compact is before the Court at the present time.

The compact also embodied, to a large extent, standards in effect in States with the more advanced child labour legislation.

In brief, the draft compact prohibited the employment in industry of minors under 16 years of age ; required for industrial employment, in the case of minors under 18 years of age, employment certificates with proof of age, physical fitness, and definite evidence of a job ; prohibited the employment of minors under 18 in any industrial employment determined by the appropriate State authorities to be hazardous or injurious to the health or safety of such minors ; and provided that the time worked by minors 16 to 18 years of age in permitted industrial employments should not exceed 8 hours in any one day, or 40 hours in any one week, or six days in any one week ; also that such minors should not be employed between the hours of 10 p.m. and 6 a.m.[1]

Arrangements made for signing the compact at the meeting of the Interstate Conference on Labour Compacts at Harrisburg, Pennsylvania, in November 1934 were deferred for several months in order that there might be no possible conflict with the Federal Child Labour Amendment which was to be presented to a large number of State legislatures during 1935. Consideration of the compact was resumed at the meeting held at Spring Lake, New Jersey, on 30 June 1935. The proposed draft was unanimously approved by the commissioners and representatives of the Governors of the sixteen States represented at the Conference. This action was taken after a provision had been added to the effect that it should be understood that the compact does not cover the entire field of child labour but is primarily concerned with child labour activities affecting interstate competition ; and that nothing contained in the compact should be construed as a substitute for the Federal Child Labour Amendment. It was planned that the compact would be signed at the following meeting, and then presented to the State legislatures for ratification at their next sessions.

At the Interstate Conference meeting in Albany on 18 and 19 October 1935, however, action in signing the compact was again postponed in deference to fears of the proponents of the Child Labour Amendment that ratification of a child labour compact might adversely affect the chances of the Amendment. This action was taken pending consultation with officials of the

[1] Cf. the standards adopted by the States at the second National Conference on Labour Legislation held in Asheville, North Carolina, 4-5 October 1935.

American Federation of Labour and with State labour officials, who had expressed distrust of any child labour compact on the ground that any effort to make such a compact a reality would interfere with ratification by the States of the Federal Amendment.[1] It will be noted that the child labour compact, like the minimum-wage compact, deals mainly with existing labour legislation, and is more in the nature of an attempt to secure uniformity than to create new standards. This compact, like the minimum-wage compact, is of the open type, becoming effective when ratified by the legislatures of two or more States with the consent of Congress.

The Hours of Labour Compact

Hours of labour, the third subject chosen for compact negotiation, proved a highly controversial issue. Because of its prominence as a factor in interstate industrial competition, the emphasis placed on the subject in pending Federal legislative measures, and the demand of organised labour for a reduction of hours as one means of coping with unemployment, the proposal for limitation of hours was regarded as one of the most important subjects for interstate agreement. At the same time, it was recognised as one of the most difficult problems presented. As suggested by the Chairman of the Hours of Labour Compact Committee of the Interstate Conference on Labour Compacts, there was probably more active interest and more real difference of opinion on the limitation of hours of employment than on any other subject considered by the conference.[2]

While there was some divergence of viewpoint as to the type of compact to be used—whether the open or the closed type—it was early in the deliberations decided that if agreement were to be reached on an hours of labour compact, it would have to include a number of industrially competing States. Whether such a compact should require for its effectiveness ratification by certain specified States, or by a certain number of States, or

[1] At an interview held by representatives of the Interstate Conference on Labour Compacts with William Green, President of the American Federation of Labour, in Washington, D.C., on 11 December 1935, Mr. Green said that the Federation was fearful that the movement for a child labour compact would hamper Labour's attempt to secure the Constitutional Amendment. He explained that this attitude applied only to this particular compact, and that in many other fields, such as social security and workmen's compensation, Labour would co-operate.

[2] Address by Professor George E. BIGGE at Spring Lake, New Jersey, 28 June 1935. (Unpublished MS.)

by a combination of both, was the subject of long discussion. Consideration was also given to the possibility of requiring representation of different regional groups of States; as the East, South, and Middle West. In the agreement finally reached, it is provided that the compact shall become effective on ratification by the legislatures of fifteen States.[1]

The terms of the compact were also the subject of extended debate and committee study. Some of the members favoured using the compact as a means of promoting uniformity in existing State legislation regarding hours of employment, suggesting in this connection that a 48-hour week, representing practically the highest standard in effect in State legislation[2], be taken as the general standard. Others, pointing to the 40-hour limit established under a majority of the codes of fair competition, and to the wide demand for shorter hours, felt that it would be impracticable and unfair to suggest a lower standard. Still others, influenced by the demand of labour for a 30-hour week, favoured an even shorter limit on the working period.

At the Spring Lake, New Jersey, meeting in June 1935, as agreement could not be reached, the matter was again referred to a committee enlarged to provide wider representation. A draft compact calling for a 40-hour week, with specified exceptions, as in the case of shortage of certain classes of labour, and permitting some administrative flexibility to deal with emergencies, was adopted at the meeting held in Albany, New York, on 18 and 19 October 1935. This action was based on the majority report of the compact drafting committee.

The report declared that the 40-hour week now appeared to be a practical possibility and that the difficulties associated with such an arrangement arose mainly in connection with provisions for making a general limitation effective without imposing undue burden in cases which might call for exceptions to the general rule. It was further suggested that the State Compact Commissions should give the matter early attention with a view to signing the compact at the next meeting of the Interstate Conference.

In reaching agreement on a 40-hour compact, the conference was doubtless influenced by the recent recommendations of the

[1] Draft of hours of labour compact approved at meeting in Albany, New York, 18-19 October 1935.

[2] Oregon has a 44-hour week for women and minors in certain occupations. With this exception, 48 hours is the highest standard in any State for hours legislation.

second National Conference of the States on Labour Legislation [1] in favour of such a maximum, and by the world-wide recognition of this standard through the action of the International Labour Conference in June 1935 in adopting the principle of the 40-hour week. In this connection it may be of interest to note that the Convention on Hours of Labour prepared by the International Labour Office in 1935 was considered by the Interstate Conference on Labour Compacts in preparing the compact on hours of employment.

Procedure in Labour Compacts

The labour compacts described embody general principles representing the minimum standards agreed upon by the participating States. Each State joining in one of these compacts pledges itself, by the act of its legislature in ratifying, to enact forthwith the necessary laws to establish and maintain the required standards and to provide for enforcement and supervision of the operation of the laws relating to the compact and those enacted to make its terms effective.

In the standard form adopted by the Interstate Conference for use in labour compacts, provision is made for the appointment in each participating State of an unpaid Commission representing labour, industry, and the public, such Commission to be appointed by the Governor of the State to deal with other ratifying States concerning questions arising under the compact. There is further provision for an Interstate Commission composed of the Chairmen of these various State Commissions. The Governors of the signatory States are required to request the President of the United States to appoint a representative of the Federal Government to this Interstate Commission.[2]

The functions of this Interstate Commission are to investigate problems arising among the States regarding the compact or the laws enacted in accordance with its terms ; to enquire into proposed resignations of member States ; and to publish its findings and recommendations with regard to the enquiries made. The Interstate Commission has no mandatory powers, its authority being confined to investigations, recommendations,

[1] Second National Conference on Labour Legislation called by the United States Secretary of Labour and held in Asheville, North Carolina, 4-5 October 1935.

[2] See titles I and II of the draft compacts on minimum wage, hours of labour, and child labour.

and reports. It is an agency of the States to assist them in the execution of a mutual undertaking. In no sense is it a super-State.

Under the compact arrangement, the individual States maintain intact their independence. Each participating State by act of its legislature ratifies the compact agreed upon by its chosen representatives in negotiation with similar representatives from the other States. Each State also by act of its legislature enacts the laws to meet the terms of the agreement, and provides for their execution through its own administrative officials. Any member State may propose modification, extension, or revision of the terms of the compact. And any State desiring to do so may withdraw from the compact after giving notice of such intention and waiting for a specified time.

In ratifying a compact, each State agrees that it will not withdraw until it has reported to the Interstate Commission the reason for its desire to take such action. Upon receiving such report from a member State, the Interstate Commission is required to investigate the situation and submit its recommendations within six months. If the State still desires to withdraw, it agrees to defer such action for two years from the date of the findings of the Interstate Commission.

Non-member States may at any time become party to a compact by act of their legislatures in ratifying the compact, subject to the consent of the Congress of the United States. Compacts that have been ratified may be modified, revised, or extended in whole or in part upon recommendation of the Interstate Commission, by action similar to that taken in making the original compact effective; that is, through ratification by the legislatures of the participating States and consent of the Congress of the United States.

Uses of Labour Compacts

Of the possible uses of interstate compacts in the field of labour legislation, three may be considered as of special significance. (1) Compacts between the States may be regarded as a means of obtaining higher standards of labour legislation than at present exist in any State. They may embody desired ideals rather than existing laws. (2) Compacts may be utilised to promote uniformity in existing labour legislation. In this way they may serve to bring States without adequate legislation

up to the standards already established by the more progressive States. (3) Another use of compacts on labour matters is to deal with special problems that concern a group of States, problems that no one State is competent to adjust independently and that are too limited in their scope or too specialised for action by the Federal Government, or that may lie outside the sphere of Federal control. As the application of compacts to labour legislation is still in the experimental stage, no compact of this nature having as yet been finally consummated, any discussion of the relative merits of the various uses of such compacts is still largely theoretical.

From the nature of interstate compacts and the history of their use in other fields, their application to special labour problems applying to a few States would appear logical. All of the interstate agreements in other matters, with the possible exception of that for the regulation of motor-buses negotiated between nineteen States in 1934, have been of this type. Illustration of such application of labour compacts to matters concerning a group of States would be the regulation of industrial home work between a State from which material is sent into the homes of other States to be manufactured and the States in which the work is done. Other examples might be the control of migratory labour, and the regulation of child labour and the enforcement of school attendance requirements between adjacent States in the case of migratory child workers. Compacts of this kind, involving a few States with common industrial problems, should be fairly easy to negotiate, and presumably could be consummated within a reasonable time. To date, no compact of this nature has been initiated.

From the point of view of practical considerations—effectiveness, the possibility of competition within a moderate period of time, and sufficient flexibility to permit recognition of special conditions in the individual States—the use of compacts to promote uniformity in existing labour laws would appear sound. If the best legislation in effect is taken as the standard, that would mean not only greater uniformity but also higher standards in labour legislation generally.

This use of the compact as a device for uniform labour laws might be applied to a group of competing States, or might serve to promote uniform labour standards throughout the country. In either case, its use would appear broader than that discussed in connection with special problems between adjacent

States. In fact, the primary use of an interstate compact to bring about greater harmony in the labour legislation of several States with competing industries might be merely a preliminary stage to general uniformity in the legislation on the subject.

The one labour compact which has reached the stage of Congressional action [1], the compact on minimum-wage-fixing machinery, falls into this second classification of interstate labour compacts. It represents an effort to secure uniformity in existing minimum wage legislation and to promote the enactment of similar minimum wage laws in States without such legislation. This compact, described in detail elsewhere in this article, did not attempt to introduce new legislation. The mandatory fair-wage laws already in effect in several States were taken as meeting the principles established under the terms of the compact.

This compact has already been ratified by three of the signatory States—Massachusetts, New Hampshire, and Rhode Island. Under its terms, the compact becomes effective when ratified by the legislatures of two or more States and approved by Congress. It has been signed by the Commissioners and representatives of the Governors of seven States. Of the States that have ratified by act of their legislatures, New Hampshire already had the required legislation on its statutes. Massachusetts, not having such legislation, has enacted the required law. Several States whose Commissioners have signed the compact do not as yet have any form of minimum wage legislation. This means that when their legislatures ratify the compact they will be under obligation to enact mandatory minimum fair-wage laws. [2]

The child labour compact now under consideration by the Interstate Conference on Labour Compacts is another example of the use of interstate agreements to attain uniformity in labour legislation. Practically all the provisions included in the standards proposed for this compact appear in some of the existing State child labour laws, although in no one State are all these provisions found at the present time. The fact that this compact was unanimously approved at a conference of Commissioners and representatives of Governors of sixteen

[1] See above, p. 801, note [2].

[2] Of the seven signatory States, four have enacted laws that conform to the standards set by the compact. Two other States now participating in the Conference but not members at the time the minimum wage compact was signed have also enacted the laws meeting the compact requirements.

States would seem to indicate that compacts of this type are reasonably easy to negotiate. In considering the time element in connection with this compact proposal, it should be remembered that, as already explained, after agreement had been reached on the terms of the compact, action was twice postponed in order that there might be no possibility of confusion with the Federal Child Labour Amendment.

There should be wide opportunity for the development of interstate compacts as a means of harmonising conflicting provisions of State labour laws. Unemployment compensation legislation would seem to offer a profitable field for such effort. As a result of the enactment by the United States Congress of the Social Security Act [1], presumably all the States that have not as yet enacted legislation on the subject will do so. Presumably, also, there will be considerable variation in these laws, as evidenced by those already enacted. Yet the need for uniformity is emphasised by the migration of insured employees from one State to another and by the constantly widening geographical scope of industry.

In this connection, one of the recommendations adopted by the second National Conference on Labour Legislation [2], representing the various States, is of interest. This is that the States should adopt in their laws a uniform basis of coverage to avoid such conflicts in State jurisdiction as have occurred in the field of accident compensation, and should authorise reciprocal agreements on such features of unemployment compensation as those providing for the registration of workers, the payment of benefits to workers becoming unemployed in States distant from the one from which their benefits are due, and preventing workers from losing their benefits because of their transfer from a job in one State to a job in another. Interstate compacts, it was suggested, should assist in this field. This subject was also discussed at the Albany meeting of the Interstate Conference on Labour Compacts. Workmen's compensation laws and industrial health and safety codes are other fields where interstate compacts to promote uniformity in regulations might prove of service.

The third use of labour compacts mentioned above is illus-

[1] U.S. Public—No. 271—74th Congress, First Session. (H.R. 7260.)

[2] Second National Conference on Labour Legislation called by the United States Secretary of Labour, held at Asheville, North Carolina, 4-5 October 1935. Report of the Committee on Unemployment Compensation.

trated by the proposed agreement on hours of labour. In this compact the standards set up are definitely in advance of existing legislation in any of the States, although based on provisions established in a majority of the codes of fair competition. This compact has proved to be far the most difficult problem the Interstate Conference has undertaken. Its adoption at the Albany meeting in October 1935 after more than a year of discussion was by majority vote and after a divided committee report. The practical success of this type of labour compact, as of the others considered, remains to be demonstrated by the test of experience.

Recent Development of the Compact Movement

Interest on the part of the Federal Government in the compact movement has been evidenced in various ways. Reference has already been made to the letter from the United States Secretary of Labour to the Chairman of the Massachusetts Commission on Interstate Compacts.[1] At the signing of the Minimum Wage Compact, President Roosevelt sent a message to Governor Winant of New Hampshire saying:

> You may recall that in January 1931, when I was Governor in the State of New York, I called the first Conference of Officials to the North-Eastern States to consider the possibility of proceeding by joint State action to maintain and improve industrial and labour standards. Because this meeting on 29 May is at least in part an outgrowth of our earlier discussions in Albany, I naturally have deep personal satisfaction in it. But my interest goes much further—for the State action now proposed is complementary to the national action already taken in Washington to give American citizens a more ample and more secure life.[2]

Following the breakdown of the N.R.A. codes, the Secretary of Labour called a meeting of the Interstate Conference on Labour Compacts in Washington to consider ways of meeting the situation.[3] Subsequent to this meeting, the President wrote to the Chairman of the Conference that he was having a study made of Interstate Labour Compacts.[4]

The resolution adopted by the first National Conference on Labour Legislation called by the Secretary of Labour in Wash-

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[1] See above, p. 796.

[2] Letter from President Roosevelt to Governor Winant, 25 May 1934.

[3] Fourteenth meeting of the Interstate Conference on Labour Compacts held in the Department of Labour Building, Washington, D.C., 4-5 June 1935.

[4] Letter from President Roosevelt to Henry Parkman, Jr., 6 June 1935.

ington, 14 and 15 February 1934, recommended consideration of the Interstate Labour Compact by the States and further recommended that arrangements be made by the United States Secretary of Labour for regional labour conferences between the States.

At the second National Conference on Labour Legislation held in Asheville, North Carolina, 4-5 October 1935, a similar resolution was adopted, recommending *inter alia* that the Conference endorse the movement of the States by interstate compact to achieve uniformity of laws affecting labour and industry.

From the time the Interstate Conference on Labour Compacts was organised, it was recognised that it would be desirable, in the movement for uniform labour legislation, to secure the co-operation of competing States. An effort was therefore made at the outset to interest other States besides those mentioned in the original Massachusetts Resolve [1] to join in compact agreements.

The movement for interstate compacts on labour legislation is apparently developing on broader lines than purely regional ones. An increasing number of States from all sections of the country have been participating in the Interstate Conference on Labour Compacts. Originally made up of representatives from the New England States, this conference now includes representatives from the north, south, east, and west. Eight States have established interstate compact commissions with legal power to confer and to negotiate with similar commissions in other States with regard to labour compacts. In addition to this, twenty-three States have created commissions on interstate co-operation, some of which have committees on labour which are meeting with the Interstate Conference on Labour Compacts. In other instances delegates have been designated by the Governors of the States to participate in the movement to establish uniform labour standards through interstate compacts.

Problems Presented by Interstate Labour Compacts

Impetus to the compact movement in the United States has been given by the decision of the United States Supreme

[1] See above, p. 795.

Court in the Schechter case.[1] This opinion, in addition to invalidating the codes of fair competition adopted under the National Industrial Recovery Act, reiterated the dictum that regulation of conditions of labour within the States is the function, not of the Federal Government, but of the separate States.

The need for nation-wide, uniform, basic standards for the control of employer-employee relations has been emphasised by the collapse of the codes. Numerous plans have been put forward for further legislation to preserve permanently, if possible, the social and economic advantages temporarily secured under their labour provisions. The prominence given to the compact movement in consequence of the breakdown of the codes has resulted in searching enquiry as to the potentialities of this agency in the field of social welfare legislation—its defects and possible weaknesses as well as its advantages.

Questions that naturally are raised in any consideration of the utilisation of labour compacts between the States are: Will such compacts be effective ? Are they workable ? Can they be enforced ? Does the compact method represent a practical means of harmonising State labour laws ? Can labour compacts be negotiated, ratified, and made effective in the States within a reasonable time ? What will be the effect of such compacts on Federal legislation relating to labour, on State labour laws ? Does the compact in this field present dangers that may outweigh its possible usefulness ?

Fear is expressed by some that the compact as applied to labour legislation is unworkable, that it is too cumbersome a device to be practicable for the promotion of uniformity in State labour laws. Those taking this position cannot envisage all the industrial States entering interstate agreements to level labour standards, and contend that non-co-operation on the part of a few key States, which could be forced by hostile manufacturers, would destroy the movement. They also hold that countless compacts would be necessary to cover the points which could be taken care of in a single Constitutional amendment.[2]

Others argue that interstate compacts are a clumsy attempt to duplicate the Federal Government itself when the Federal

[1] See above, p. 791.

[2] " States Turn to Compacts ", by Edgar Mackay Mills, in *Christian Science Monitor, Magazine Section*, 4 Sept. 1935, pp. 4 and 14.

Government is prevented from acting. According to this view, labour compacts are treaties which the States would make among themselves instead of having their Federal Government pass the desired laws.[1]

Perhaps the question that most frequently arises in connection with the use of compacts as a means of harmonising labour legislation between States is that of their effectiveness in securing the desired result. Will interstate compacts really bring about greater uniformity in labour legislation ? Assuming that compacts dealing with labour and industries are negotiated and ratified by the requisite number of States to become operative according to the terms of the agreements, and assuming that the necessary Congressional consent is secured, can such agreements between the States be enforced in any practical way ?

Court action is presumably possible in the case of labour compacts, as in those dealing with physical matters, such as boundaries and waterways. Such action, however, is slow and cumbersome, and is unlikely, therefore, to be much utilised. The possibility of such procedure also raises the further question of how the judgments of the court would be enforced in cases involving violation of a labour compact represented by the failure of one of the participating States to enact or properly to enforce the required labour legislation.

Probably the most effective agency as sanction for interstate labour compacts is public opinion as developed and utilised by the Interstate Compact Commission created under the terms of each interstate labour agreement. These commissions, as elsewhere described, are agencies set up to assist in assuring the execution of the compact. They have no direct enforcement powers : but are, however, authorised to investigate questions concerning the application of compacts and to make reports and recommendations.

Somewhat related to the question of enforcement of compacts is that of the protection of States that have entered into a labour compact from the competition of States that remain outside the compact. A suggestion which has been given consideration in this connection is that the National Government might exclude from transport into compacting States the products made in non-compact States under labour conditions

[1] " Back to States' Rights ", by George SOULE, in *Harper's Magazine*, Sept. 1935, pp. 484-491.

that are below the standard set by the compact. Similar legislation has been upheld by the courts in connection with the exclusion of intoxicating liquors from transport within the borders of no-license States.[1] Such legislation has been employed by Congress in connection with the exclusion of prison-made goods from States whose laws forbid the sale on the open market of goods made by prison labour.[2] Legislation of this type bears a close analogy to the proposal just mentioned in connection with labour compacts. The constitutionality of the law regarding prison-made goods has not as yet been determined. It is thought by some that it would be invalidated in line with the decision of the Court nullifying the Federal child labour law. Others point out that in the present type of legislation the Federal Government is not imposing legislation on the States but is acting to protect the States in making their own laws effective.

It has been suggested by some that interstate compacts represent an important part of the renewed State rights drive and that many believe that compacts constitute the principal, if not the sole, medium for solving many of the present-day interstate problems without further enlarging Federal powers. Those taking this point of view contend that the States are gradually realising that their competitive advantages, based on low labour standards, will not last; that unless the standards are raised to a common level, neighbouring States may lower their standards below that of States now enjoying competitive advantages; and that the result of such economic rivalry would destroy the American standard of living and ultimately bring industrial ruin.[3]

As yet, however, the advantages of compacts affecting labour legislation are advantages in theory rather than in fact. The practical success of such compacts remains to be demonstrated, inasmuch as no interstate agreement of this nature has as yet been finally consummated. Crucial tests of the effectiveness of compacts affecting labour and industry will be whether it is possible to secure adequate arrangements between a number of States with competing industries covering the major economic issues involved; whether the standards agreed upon will represent a definite improvement in working conditions; and whether

[1] Cf. the Webb-Kenyon Act.

[2] Ashurst-Sumners Act (Public No. 215, July 1935).

[3] "States Turn to Compacts", by Edgar Mackay MILLS, in *Christian Science Monitor, Magazine Section*, 4 Sept. 1935, pp. 4 and 14.

it is possible to complete the arrangements and make the compact effective within a reasonable time.

Whatever the outcome of the compact movement—whether it proves a positive factor in unifying labour legislation or fails to realise that objective—the fact that there is such a movement is significant, for it demonstrates the urgency of the problem to be met. To that problem the recent action of the United States in joining the International Labour Organisation gives added interest. It suggests that the desired uniformity in standards for legislation affecting labour and industry may be realised through the ratification of the Draft Conventions adopted by the International Labour Conference. In this connection it is conceivable that the educational results of the movement for interstate labour compacts may assist in a better understanding of the nature and purpose of the Draft Conventions; and so, indirectly, may contribute to their ratification.