

May Day

and the Struggle for the Eight Hour Day in California



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California is one of the few states which requires employers to pay overtime after eight hours work in a day.¹¹ Federal law only requires overtime after forty hours in a week.²¹ The Eight-Hour-Day (at least on public works) is even enshrined in the California Constitution.³¹

The Eight Hour Day was not won easily. Nationally, the movement for the Eight Hour Day gave birth to May Day, which is celebrated throughout the world as a day for Labor. In California, the Eight Hour Day is the result of a long struggle of what Carey McWilliams called the “total engagement” of labor:

“The California labor movement has long occupied an altogether exceptional niche in the history of American labor. . . . The California labor movement, to a degree that is not generally appreciated, has had an important influence on national labor trends. . . . It has been the total engagement of labor in California that has, from the beginning, given the California labor movement its distinctive character. The labor struggle in the state has not been partial and limited, but total and indivisible; all of labor pitted against all of capital.”⁴¹



Chinese laborers working on a railroad in California.

Early Struggles to Limit the Hours of Work in California

As early as 1853, the brand-new state of California, still basking in the Gold Rush, passed one of the first laws limiting the hours of labor. The original proposal, which received widespread support, would have punished any employer who required employees to work more than ten hours.⁵⁷ Subsequent lobbying by employers watered down the proposal, so that the law finally enacted provided only that *“Ten hours shall be considered a legal day’s labor in any action in law, in any of the courts of the State.”*⁵⁸ This meant that the 10-hour day was only a *presumption* at law. Employers could require more hours, if they made it an explicit part of the employment agreement. So this law was up to the workers to enforce through their own bargaining power. At the time, labor was strong enough to maintain a ten hour day maximum in most industries. But as the economy rose and fell, along with the bargaining power of labor, the maximum hours of work fell and rose accordingly.

Following the Civil War, Labor began agitating for an 8-hour day in California. In 1866, a bill was introduced for an 8-hour day, but it was killed after passing the Assembly.⁷⁷ Unions then began agitating for the 8 hour day through their economic power. An “Eight Hour League” was formed by a coalition of labor organizations. Unfortunately, much of its activity was diverted to anti-Chinese agitation.

The first “Labor Day” in California was June 3, 1867. This was the deadline set by unions in the state, for an 8-hour day in all

industries. Labor marched and struck, if necessary, to achieve this goal. Labor also took its cause back to the Legislature, and managed to pass California’s first 8-hour law. The first section of the 1868 law, similar to the 1853 law, provided that *“Eight hours labor shall be deemed and held to be a legal day’s work, in all cases within this State, unless otherwise expressly stipulated between the parties concerned.”* Again, it was up to workers to maintain the 8-hour day through their own bargaining power, in private employment at least. The 1868 law also mandated an 8-hour day for public works for the State, and required that *“a stipulation to that effect shall be made of all contracts”* for public work. Finally, it absolutely prohibited employment of minors for more than 8 hours a day.⁸¹

While Labor had some influence in the Legislature, the Courts were mostly on the side of business when it came to economic matters. So the 1868 law immediately ran into trouble in the courts. The California Supreme Court limited the law, as applied to public works, by reading it as requiring only that contractors agree to abide by the law, but not to actually give an 8-hour day to their workers, since the latter would be *“an abridgement of, and a limitation upon, the powers of parties to contract about their own concerns.”*⁷⁹ Following this decision, Labor went back to the Legislature to obtain a stronger law. They did this by adding a provision that all workers on public works *“shall be employed by the day, and no work upon any of said buildings shall be done by contract.”*⁸⁰

Economic depression gripped the state through most of the 1870s. As a result, many workers lost the 8-hour day they previously had won through their bargaining power. They worked longer hours, for shorter pay, and many more were unemployed. Many workers blamed the Chinese for their problems. Chinese laborers were brought in to build the transcontinental railroad. After the rail line was completed in 1869, many Chinese remained in California, where they often competed with European workers for scarce jobs. As conditions worsened, workers gathered in “sandlot” meetings to hear speakers and protest their conditions. Dennis Kearney, who had previously been hired as a goon to break up strikes, dominated these sandlot meetings as a supposed advocate for Labor, blaming the Chinese for the workers problems. He managed to take over the newly-formed “Workingmen’s Party” and divert its agenda to anti-Chinese agitation.

The Workingmen’s Party garnered a tremendous amount of support, and began fielding candidates throughout the state. They led a successful effort to call a new Constitutional Convention, and won a large number of seats at the Convention itself. In the new Constitution drawn up at this Convention in 1879, most of the Workingmen’s Party effort was directed towards anti-Chinese provisions. But many pro-Labor provisions were also added, including one for the 8 hour day. The 1879 California Constitution, as approved by the voters, provided that *“Eight hours shall constitute a legal day’s work on all public work.”*⁸¹

The First May Day

The 1880's saw renewed effort to obtain and keep an 8 hour day, throughout the nation. At its 1884 Convention, the Federation of Organized Trades and Labor Unions of the United States and Canada, which later became the American Federation of Labor (AFL), adopted this resolution:

"Resolved, . . . that eight hours shall constitute a legal day's labor from and after May 1, 1886, and that we recommend to labor organizations throughout this district that they so direct their laws as to conform to this resolution by the time named."^{12/}

This demand was meant to be backed up by strikes where necessary to achieve the 8-hour day by the May 1, 1886 deadline. It was promoted throughout the nation over the next two years. By the first May Day, 350,000 workers went on strike at 11,562 establishments. Approximately 185,000 achieved the 8-hour day as a result.^{13/} This of course does not count the many more who had already achieved the 8-hour day, including many in California. According to Samuel Gompers, head of the AFL: *"I have no hesitation in expressing my conviction that the movement of 1886 resulted in a reduction of fully 1 hour's labor of the working people of the United States."^{14/}*

Among those striking on the first May Day for the 8-hour day were workers at McCormick Harvester in Chicago. On May 3, 1886, the workers were still out on strike when strikebreakers were brought through the picket lines by police. The crowd of strikers and supporters tried to block the scabs, and police fired into the crowd, killing four and wounding many others. A mass demonstration against the killings was immediately organized, and set for Haymarket Square the next day, May 4. The organizers included anarchist labor activists Albert R. Parsons, August Spies and Samuel J. Fielden. By the time the speeches were wrapping up and the crowd breaking up that evening, the police returned, and ordered the crowd to immediately disperse. As if on cue, a bomb was thrown. One of the police was killed, and many more in the crowd were wounded.

The next day, police swept through Chicago and arrested hundreds - mostly union leaders and anarchists. Parsons, Spies and Fielden were charged, tried and convicted of murder, not for throwing the bomb, but on the grounds they incited through their speeches the bomb-thrower. The prosecution admitted to the jury that *"They are no more guilty than the thousands who follow them"* and asked for convictions based on their beliefs. Barely a week after their final appeal to the Supreme Court was denied,^{15/} the executions went ahead. Six years later, the new Governor of Illinois posthumously pardoned them.

California, unfortunately, was both ahead and behind the rest of the nation on that first May Day. California was ahead, in that the 8-hour day had already been won by many workers, and was part of the California Constitution. California was behind, in that the eight hour day had been lost in many industries by 1886, and



Artist depiction of bomb at Haymarket Square in Chicago, 1886

Labor in California was too preoccupied with throwing out the Chinese to pay much attention to their own working conditions. That first May Day *"received virtually no support from the organized workers in California."^{16/}* Instead, labor supported a pogrom of violence against the Chinese throughout the state. Because they were caught up in racism, California labor missed this opportunity to advance the 8-hour day on the first May Day in 1886.^{17/}

The Progressive Era and the Eight Hour Day for Women

Revolution was in the air when the Second Decade of the Twentieth Century dawned on California. Labor was on the rise, especially in Los Angeles, where class warfare literally exploded with the bombing of the Los Angeles Times building. Job Harriman, one of the lawyers representing the union officers accused of the bombing, was nearly elected mayor of the city, on a Labor-Socialist ticket. A few blocks away, some of Harriman's other clients, refugees from the Diaz regime in Mexico, were planning the takeover of Baja California by the Partido Liberal de Mexico (PLM), which would be known as the precursor of the Mexican Revolution. At the same time, women of all classes were campaigning for suffrage rights. Finally, but most significantly, a small group of otherwise conservative businessmen and professionals, which came to be known as the Progressive Movement, were planning the overthrow of the existing power structure, which had been dominated by the Southern Pacific Railroad.

It was in this "Progressive Era," during two action-packed legislative sessions of 1911 and 1913, that the modern 8-hour laws were enacted in California. In 1910, the "Progressive" Republicans won a majority of seats in the Legislature, and elected one of their own, Hiram Johnson, as Governor. While the Progressives were not exactly pro-Labor, they were sensitive to the need for working class votes in order to stay in office for their



Women's Union Label League (WULL) 1910

own agenda. Legislation favorable to Labor would not have been enacted in those legislative sessions, if it was not for an intensive lobbying effort. Leading the charge of lobbyists to the Capitol, was a group of determined women activists.

Women in California had been historically active and vocal in asserting their rights. But it was the rising assertiveness of working women which made the difference. One important organization was the Women's Union Label League (WULL). The WULL was formed in 1899 in Indiana, to encourage housewives to buy union goods. In California, the WULL went far beyond its original calling, to lead the charge for labor legislation, and organizing women workers.

Perhaps the most intriguing bridge between the classes was Maud Younger, the "Millionaire Waitress." Born to a wealthy family in San Francisco, she earned her title when she not only worked as a waitress, but helped organize the City's first union of waitresses. When working women split from the middle-class suffrage organization to form the Wage Earners Suffrage League (WESL), Younger joined them, proclaiming that Suffrage "is merely a question of sex" to middle-class suffragists, "who are using the unions as tools only," but with "Union Women," with whom she identified herself, "it is a question of the things that affect men and women alike."^{18/} She later applied her skills towards the passage of the federal Constitutional Amendment granting suffrage to women.

Once the Progressives swept into the Governor's mansion and filled up both houses of the legislature in 1911, an entire contingent of suffragist lobbyists descended on Sacramento. In the ensuing debate, one Senator put down the suffragettes by defining them as "a woman who wants to raise hell, but not children" to which one of the suffrage lobbyists replied that a suffragette is "a woman who wants to raise children, but not in hell."^{19/} Ultimately, and an amendment to the constitution was approved for submission to the voters.^{20/} Most unions endorsed



Maud Younger

the amendment, as did all of the major labor councils, the California Federation of Labor, Gompers and the national AFL, and of course the Socialists, who were a significant political force at the time. With this working-class support, Women's Suffrage was won in California in 1911, by a narrow margin, but a decade before the federal amendment granting suffrage.

Fresh from their victory on suffrage, these women activists turned their attention to labor issues. Joining Maud Younger in the halls of Sacramento was Katherine Philips Edson, who was closely tied to Johnson and his Progressive administration. She was appointed as a special agent to the Bureau of Labor Statistics, and when the Industrial Welfare Commission was formed, she became the first woman Commissioner.^{21/}



Katherine Philips Edson

At this time, laws restricting the hours of labor were viewed suspiciously by the courts as unconstitutional infringements of the supposed "freedom of contract" of the laborer.^{22/} Supporters of an Eight-Hour Law were painfully aware of these precedents, and devised their strategy accordingly. An 8-hour law on public works, similar to that of California, had been upheld.^{23/} An 8-Hour law for women only was upheld, although the Supreme Court noted that like legislation affecting male employees might be invalid.^{24/} The difference, according to the Court, was that "the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race."^{25/} Between the opposition of the courts and the reluctance of organized labor, the focus became passing a law only for women and children. That is not to say there was some effort in California to pass a general 8-hour law for all workers, but it was not well received by the public.^{26/} The idea of an 8-hour law for women only was more warmly received, and the first California Labor Legislative Conference in 1910 adopted the WULL suggestion of pressing for an 8-hour bill for women.

The Legislators quite literally tripped over each other to take responsibility for an 8-hour bill for women. Three similar bills were submitted.^{27/} In the Assembly Committee it was agreed to go with one of them, with amendments. The powerful agri-business lobby also weighed in, and managed to have fruit and vegetable harvesting and processing exempted from the bill. The single amended bill passed the Assembly by a unanimous vote.^{28/}

After passing the Assembly, business (other than agri-business, who already achieved their exemption) mustered their forces against the bill. The Senate Committee on Labor, Capital and Immigration held two hearings in a packed hall, at which scores of businessmen predicted the economic collapse of the

state, should the bill pass. Several amendments were offered to soften the bill, but all were defeated, including one for a fifteen minute “grace” period over eight hours in a day. After three readings, the bill finally came to a vote in the Senate, where it was passed, 34 - 5.

Governor Johnson, while expressing doubts that “a less drastic and more elastic might have been preferable,” signed the bill into law.^{29/} In his message upon signing the bill, he noted the existing laws for an 8-hour day on public works, and said: “Strong men, by unity of action, have obtained for themselves an eight hour day. Shall we require greater hours of labor for our women?”^{30/}

The bill as passed, prohibited the employment of any “female” in most industries except agriculture from working “more than eight hours during any one day or more than forty-eight hours in one week...”^{31/} The penalty for violating the law was criminal prosecution, as a misdemeanor.^{32/}

Despite amendments in the next session to strengthen the law, it was still felt that a more permanent method of enforcement and regulation was needed, one that could withstand a constitutional challenge. Edson, who by now had been appointed to the Labor Bureau, took up the task of coordinating this effort. It was proposed to establish an Industrial Welfare Commission, to periodically establish minimum wages, hours and working conditions (for women and minors only) in various industries. Because of the minimum wage provision, this engendered opposition from parts of organized labor. Samuel Gompers instructed the California Labor Federation lobbyist, John Nolan, to oppose the bill, saying “We want a minimum wage, but we want it established by the solidarity of the working men themselves through the economic forces of their trade unions, rather than by any legal enactment.”^{33/} Other segments of labor supported the bill, most notably the socialists and the Los Angeles Labor Council.^{34/} Despite the contradictory sentiments of Labor, the bill passed in the 1913 session.^{35/} The job of the Industrial Welfare Commission (IWC) is “to ascertain the wages paid, the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed” in California.^{36/} These wages, hours and conditions so established and updated, were to be legally-enforceable regulations.

Still unsure of whether the IWC could pass constitutional muster, a proposition was placed on the 1914 ballot to make it a part of the California Constitution.^{37/} As the ballot argument explained: “this is done to make sure that after the commission’s work is done, its findings and rulings can not be assailed and made useless by the state courts declaring this act unconstitutional.”^{38/} The Proposition passed by a healthy margin, establishing the IWC with powers vested from the California Constitution itself.^{39/} Katherine Edson was appointed one of the first Commissioners of the new IWC, its first female Commissioner.

The proponents of the 8-hour law breathed a sigh of relief when it was upheld by the U.S. Supreme Court.^{40/} As with the Oregon statute, the Supreme Court based its decision on “considerations relating to woman’s physical structure, her maternal functions, and the vital importance of her protection in order to preserve the strength and vigor of the race.”^{41/} California was not alone. Between 1911 and 1913, twenty four states enacted significant legislation regarding the hours of work.^{42/}

In the reactionary backlash after World War I, many of these rights were lost, as the Supreme Court embarked on a holy crusade to vindicate the “freedom of contract” to work long hours for poverty wages. In 1923, the U.S. Supreme Court invalidated the District of Columbia minimum wage law for this reason.^{43/} A case challenging the California minimum wage law was withdrawn, before review by California Supreme Court when the supposed plaintiff, Helen Gainer, revealed that she had been made a party without her knowledge. Edson, as IWC Commissioner, rolled back some of the minimum wages during an economic downturn in the early 1920s. Unions who had previously felt secure in their contracts for the eight hour day, saw those rights erode. At the same time, the free speech rights of labor used to obtain the eight-hour day in the first place, were being slashed by the Courts and newly-invigorated vigilante groups, such as the KKK. It was not until the New Deal, and the rise of organizing in the 1930s, that these rights were won back. The *Adkins* case was eventually overruled in 1937, finally putting to rest the “freedom of contract” argument used against minimum wage and maximum hour laws.^{44/}



Eight Hours A Day for All Workers

The Great Depression brought a wave of union organizing and agitation for solutions to the nation’s economic problems. San Francisco was shut down by a general strike, in support of Longshoremen, in 1934. In Hollywood, workers in the new movie business demanded union representation. The Congress of Industrial Organizations (CIO) split from the AFL to organize workers along industrial, rather than craft, lines. Socialist Upton Sinclair switched to the Democratic Party and launched his End Poverty In California (EPIC) campaign for governor.

The major movement in labor law during this time was not in California,^{45/} but in the New Deal administration of Franklin D. Roosevelt. The AFL proposed instituting a national mandatory 35 hour law, as a way to reduce unemployment. This was rejected by Roosevelt. Instead, the Democrats passed the Fair Labor Standards Act (FLSA), establishing the first national overtime law.^{46/} Unlike prior state legislation, which simply prohibited work past a maximum number of hours, the FLSA did not prohibit, but placed a premium on work past 40 hours in a week.^{47/} This was because the FLSA was enacted, not only to maintain “minimum standard of living necessary for health, efficiency, and general well-being of workers,”^{48/} but to encourage employers to hire more workers rather than force existing employees to work longer hours.

At first, the FLSA operated under the cloud of “freedom of contract” from prior Supreme Court conditions. But a new Court blew this cloud away by upholding the constitutionality of the Act, declaring that it is no “longer open to question that it is within the legislative power to fix maximum hours...Similarly the statute is not objectionable because applied alike to both men and women.”^{49/} This also cleared the air for state laws to regulate the hours of men as well as women.

Ironically, the same paternalistic attitude and fear of the courts invalidating the 8-hour law which led to giving this protection only to women in 1911, also led to that law being struck down as discriminatory six decades later. During this time, the IWC continued its task of promulgating Wage Orders requiring an 8-hour day, but for women and children workers only. In the early 1970s, a number of federal judicial decisions^{50/} invalidated many of these Orders on the ground that they violated the prohibition on sex discrimination embodied in Title VII of the federal Civil Rights Act of 1964.^{51/}

Instead of eliminating all protections, California amended its hour laws to apply to all workers. The California Constitution was amended by a Proposition passed in 1970 to give the IWC authority to make wage and hour orders for all workers.^{52/} Conforming legislative action followed.^{53/} Subsequent Wage Orders then incorporated the 8-hour day as to all workers, in a similar manner as the FLSA. In other words, work over eight hours is not flatly prohibited, but overtime must be paid, similar to the weekly overtime under the FLSA. However, these provisions requiring an 8-hour day for all workers were in the IWC Wage Orders only. The statute only set 8 hours as the default work day, which could still be contracted away.^{54/} This left the 8-hour day open to erosion when the political winds changed, which they were about to do.

Struggling to Keep the Eight Hour Day

Ever since its inception, IWC Orders have incorporated the 8-hour day, through both Republican and Democratic administrations. However, in the 1990's, business put increasing pressure on successive Republican administrations to do away with the daily overtime requirement of the 8-hour day. In 1997 and 1998, the Commission held public hearings on eliminating the 8-hour day from the Wage Orders. Despite testimony and demonstrations by workers all over the state, the IWC adopted a series of Wage Orders in 1998, applicable to most industries in the private sector,^{55/} which eliminated the 8-hour day requirement. This made California law the same as federal law, requiring overtime only after 40 hours a week, but no overtime no matter how many hours were worked in a single day.

Labor then went to their friends in the Legislature for relief. Assemblyman Wally Knox and Senator John Burton jointly introduced AB 60, the “Eight-Hour Day Restoration and Workplace Flexibility Act.” At the same time, Legislative Counsel

Bion Gregory issued an opinion stating that the IWC does not have the authority to eliminate the 8-hour day. All of this, as well as the continued demonstrations by labor against the elimination of the 8-hour day, seemed to be a brave but quixotic battle as long as Pete Wilson was Governor. Besides appointing the Commissioners who voted for these Wage Orders, he could veto any bill to overturn them. This all changed at the end of the year, when Gray Davis was elected Governor, with support from organized labor.

On July 8, AB 60 was passed by the Legislature, and on July 20, 1999, it was signed into law by Governor Davis.^{56/} The law begins with a Legislative affirmation of “the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state's unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.”^{57/}

The bill codified the 8-hour day and overtime into Labor Code § 510, so that it could not be taken away by the IWC under another administration unfriendly to Labor.^{58/} It invalidated the new IWC Orders which had tried to eliminate the 8-hour day.^{59/} However, it also codified the “alternative work week” in those Wage Orders, which allowed up to ten hours a day without overtime, if “if it receives approval in a secret ballot election by at least two-thirds of affected employees in a work unit.”^{60/} Genuine “secret ballot elections” are rarely conducted, and there is no way to verify whether there was any election at all, much less one by “secret ballot.” All an employer has to do is send a letter to the Division of Labor Statistics stating the “results” of the supposed election,^{61/} and all workers from then on are bound to the new work schedule. An alternative work-week can also be adopted through a collective bargaining agreement,^{62/} and there are also exemptions applicable to certain occupations.^{63/}

The attack on the 8-hour day was not over. It continues today. In the last annual budget stalemate in California, Republican legislators used their ability to block any budget to insist on changes to the 8-hour laws. In exchange for agreeing to the final deal brokered between the Democrats and Governor

Schwarzenegger, the Democrats agreed to drop opposition to certain bills weakening the 8-hour day. The result was ABX2 5, just passed into law.^{64/}

This new law expands upon the “alternative work week” exceptions to the 8-hour day, by amending Labor Code § 511. The new law

Bills Currently Pending Before The California Legislature To weaken the 8-hour law:

AB 5X PASSED as Stats 2009 ch. 3

AB 141

SB 187

SB 404

SBX2-5

Watch These Bills!

www.leginfo.ca.gov/bilinfo.html

allows an employer to choose a “readily identifiable work unit” in which to conduct the “election” so as to skew the results in its favor. It can also skew the election by placing a “menu” of schedules on the ballot. More important, once an alternative work week is adopted, the employer can now require employees to go back and forth between one “schedule option” and another, from week to week. So any advantage to workers in adopting an “alternative work week” is wiped out by the employer’s ability to change that schedule, at its whim, from week to week.

Other bills are currently pending before the Legislature (see side bar) to further weaken the 8-hour day. *The struggle goes on.*

May Day Returns

May Day was born in the U.S.A., by and for American workers, out of the struggle for the 8-hour day. Like “Democracy” and “Freedom,” this noble idea spread quickly throughout the rest of the globe. Unfortunately, as May Day became more popular throughout the world, it diminished among U.S. workers. Successive waves of repression of the left wing of the Labor movement, after each World War, pushed May Day out of the mainstream, so that it became known as a radical or foreign celebration.

What some hoped would be the death certificate for the American celebration of May Day came in 1958, when President Dwight D. Eisenhower proclaimed May 1st as “Law Day” to celebrate the institution of law and order, instead of the struggles of labor. In 1961, May 1 was designated by joint resolution of Congress as the official date for Celebrating Law Day, U.S.A.^{65/} While millions of workers marched throughout the world every May 1st, in the United States, lawyers gave speeches on the importance of respect for the law. Only a few bedraggled bands of workers observed the day, and fewer still knew the history of its native birth in this country.

May Day departed the country of its birth, which had forgotten it. It was brought back, stronger than ever, by workers from other countries. One Hundred Twenty years, to the day, from its birth in the struggle for the 8-hour day, May Day was celebrated again, in marches and demonstrations larger than had ever been seen before.

The immediate impetus which drove millions into the street again on May Day 2006, was the passage of an anti-immigrant worker bill by the House of Representatives. HR 4437 would have criminalized anyone lending any support to an undocumented worker.^{66/} Lawyers providing legal aid, union organizers helping immigrants assert their rights, landlords, employers, even carpools, would have been subject to criminal prosecution. As the word spread among the immigrant community, the purpose of the planned demonstrations, strikes and boycotts grew to become a general assertion of pride by immigrant workers, seeking recognition for their contributions to



May Day 1993, Paris, France

America. It was announced as “El Gran Paro Americano,” “The Great American Boycott,” and “A Day Without Immigrants.”

Even the organizers were surprised at the turnout. Millions marched around the nation of May Day’s birth. Los Angeles saw over a million people in the street, in the largest demonstration of any sort the city had ever seen in its entire history. Among the organizers and main participants were unions which had already dedicated themselves to organizing immigrant workers, including the Laborers, UNITE/HERE and SEIU. Longshoremen shut down the Port of Los Angeles for several hours. Workers left their jobs, students walked out of school, all to join the growing march down Wilshire Boulevard, which ended with a rally in Koreatown.

The bill which sparked these demonstrations, HR 4437, died in committee in the Senate. But the larger importance was that it had awakened sleeping giants. Immigrant workers found they had pride, and rights and the power to enforce them. Organized labor, in California at least, awoke to a resurgence, by organizing those workers. American Labor in general re-discovered what they had created in the first place: the power to improve their conditions through common effort. May Day has returned to land of its birth.

La Lucha Sieve! The Struggle Continues!



May Day 2006, Los Angeles

Footnotes

- 1/ California Labor Code § 510(a).
- 2/ 29 U.S.C. § 207(a)(1).
- 3/ California Constitution Art. XIV § 2:
"Worktime of mechanics or workers on public works may not exceed eight hours a day except in wartime or extraordinary emergencies that endanger life or property. The Legislature shall provide for enforcement of this section."
- 4/ Carey McWilliams, *California - The Great Exception* (UC Press 1949), at 127.
- 5/ See Lucile Eaves, *A History of California Labor Legislation* (UC Berkeley 1910), at p. 197.
- 6/ Stats 1853, ch 131, p. 187.
- 7/ See Eaves at pp. 198-201.
- 8/ Stats 1867-1868, ch. 70, p. 63; see Eaves at pp. 204 - 206.
- 9/ *Drew v. Smith*, 38 Cal. 325, 327 (1869).
- 10/ Stats 1869-1870, ch. 529 § 1, p. 777, codified in former Political Code § 3222; see *Babcock v. Goodrich*, 47 Cal. 488, 509 (1874).
- 11/ 1879 Calif. Const. Art. XX § 17. This is currently found in Art. XIV § 2.
- 12/ Proceedings of the 1884 Convention of the Federation of Organized Trades and Labor Unions of the United States and Canada, pp. 24 -25, as quoted in Philip S. Foner, *History of the Labor Movement in the United States, Volume II: From the Founding of the American Federation of Labor to the Emergence of American Imperialism* (Int'l Pub. NY 1955), at p. 98.
- 13/ Foner at pp. 103-104.
- 14/ *Report of Industrial Commission on the Relations of Capital and Labor Employed in Manufactures and General Business* (US 1901) Vo. VII p. 623, as quoted in Foner, at p. 104.
- 15/ *Ex Parte Spies ("The Anarchists' Case")*, 123 U.S. 131, 8 S.Ct. 22, 31 L.Ed. 80 (1887).
- 16/ Ira Cross, *A History of the Labor Movement in California* (UC Press 1935), at p. 181.
- 17/ See generally, Alexander Saxton, *The Indispensable Enemy: Labor and the Anti-Chinese Movement in California* (UC Press 1971) pp. 219-22
- 18/ San Francisco Call, October 4, 1908, as quoted in Mead, Rebecca J., *How the Vote Was Won: Woman Suffrage in the Western United States, 1868-1914* (NY Univ. Press 2004), at 124.
- 19/ The first comment is attributed to Senator Stanford, and the retort to Harriet Laidlaw, as reported in Selina Solomons, *How We Won the Vote In California* (New Woman Publishing 1912) at p. 46.
- 20/ Stats 1911, ch. 16 pp. 1548-1549.
- 21/ See Norris C. Hundley Jr., "Katherine Phillips Edson and the Fight for the California Minimum Wage, 1912-1923," 29 *Pacific Hist. Rev.* 271-285 (1960).
- 22/ See *Lochner v. New York*, 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905), striking down a law limiting the hours of bakers to only 60 per week.
- 23/ *Atkin v. Kansas*, 191 U.S. 207, 24 S.Ct. 124, 48 L.Ed. 148 (1903)
- 24/ *Muller v. Oregon*, 208 U.S. 412, 28 S. Ct. 324, 52 L.Ed. 551 (1908).
- 25/ 208 U.S. 412, 421.
- 26/ A general 8-hour bill, AB 31 in the 1913 Legislature, was defeated in the Senate. An 8-hour law for minors only, AB 374, passed in that same session, but was pocket-vetoes by the Governor. The Socialists put an initiative for a general 8-hour day on the 1914 ballot as Proposition 3, but it was defeated by a 2-1 margin. A limit on the hours worked by railroad employees was passed, however, reflecting the antipathy to the Southern Pacific Railroad more than empathy for labor. Stats 1911 ch. 484, now in Labor Code §§ 600-607.
- 27/ SB 223, AB 248, and AB 289.
- 28/ Franklin Hitchborn, *Story of the Session of the California Legislature of 1911* (James H. Barry Co. SF 1911), at pp. 246-250.
- 29/ Stats 1911 ch. 258, pp. 437-438
- 30/ Message of Governor Hiram Johnson, upon signing AB 248, as reported in Hitchborn, at 258-259, n. 297.
- 31/ Stats 1911 ch. 258 § 1.
- 32/ *Id.* at § 3.
- 33/ Gompers to John I. Nolan, as quoted in Philip Taft, *Labor Politics American Style: The California State Federation of Labor* (Harvard U. Press 1968), at 54.
- 34/ See Hundley, 29 *Pacific Hist. Rev.* 271-285
- 35/ AB 1251, passed as Stats 1913 ch. 324, currently found in Labor Code §§ 70-74, and 1173-1194.
- 36/ Stats 1913 ch. 324 § 3.
- 37/ ACA 90, passed as Stats 1913 ch. 98, placed on the 1914 ballot as Proposition 44.
- 38/ W.A. Roberts, Assemblyman, Argument in favor of Prop. 44, 1914 General Election, available at: <http://traynor.uchastings.edu/cgi-bin/starfinder/6482/calprop.txt>
- 39/ Calif. Constitution Art. XX § 17 ½, currently Art. XIV § 1.
- 40/ *Miller v. Wilson*, 236 U.S. 373, 35 S.Ct. 342, 59 L.Ed. 628 (1915).
- 41/ 236 U.S. 373, 380.
- 42/ Elizabeth Brandeis, *Labor Legislation*, in John R. Commons, ed. *History of Labor in the United States 1896 - 1932*, Vol. III at p. 474 (MacMillan 1935)
- 43/ *Adkins v. Children's Hospital of the District of Columbia*, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785 (1923).
- 44/ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937)
- 45/ AB 2100, Stats 1937 ch. 90, codified existing laws into a single Labor Code, without much change.
- 46/ June 25, 1938, c. 676, § 7, 52 Stat. 1063.
- 47/ "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1).
- 48/ 29 U.S.C. § 202(a).
- 49/ *U.S. v. Darby*, 312 U.S. 100, 125, 61 S.Ct. 451, 85 L.Ed. 609 (1941)
- 50/ See *Homemakers, Inc., of Los Angeles v. Division of Indus. Welfare*, 509 F.2d 20, 23, n. 7 (9th Cir. 1974), cert. denied, 423 U.S. 1063 (1976) (hour limitations); *Mengelkoch v. Industrial Welfare Comm'n*, 442 F.2d 1119 (9th Cir. 1971) (hours limitations). See also *Burns v. Rohr Corp.*, 346 F.Supp. 994 (S.D.Calif.1972) (rest breaks only required for women).
- 51/ 42 U.S.C. § 2000e-2.
- 52/ ACA 65, passed as Prop. 15, to become Art. XX § 17 ½, currently in Art. XIV § 1, which reads: "The Legislature may provide for minimum wages and for the general welfare of employees and for those purposes may confer on a commission legislative, executive and judicial powers."
- 53/ Stats.1972, ch. 1122, pp. 2152-2157 (minimum wage); Stats.1973, ch. 1007, §§ 1.5-4, pp. 2002- 2003 (maximum hours).
- 54/ Former Labor Code § 510. A 1982 amendment made an exception for commuting, but otherwise left the language intact. Stats 1982 ch. 185.
- 55/ As discussed above, the California Constitution, Art. XIV § 2, still required an 8-hour day on public works.
- 56/ Stats 1999 ch. 134.
- 57/ *Id.* § 2(g).
- 58/ *Id.* § 4.
- 59/ *Id.* § 21. The Wage Orders declared invalid were numbers 1-98, 4-98, 5-98, 7-98, and 9-98. This reinstated the prior Wage Orders, 1-89, 4-89 as amended in 1993, 5-89 as amended in 1993, 7-80, and 9-90 until new Wage Orders could be issued.
- 60/ *Id.* § 5, currently at Labor Code § 511(a).
- 61/ Labor Code § 511(e). The DLSE maintains a database of these letters on its website, at: <http://www.dir.ca.gov/databases/dlsr/DLSR-AWE.html>
- 62/ Labor Code § 514. The extent to which a union can waive these overtime protections is still a subject hotly contested in the courts. Compare, *Frestone v. Southern California Gas Co.*, 219 F.3d 1063 (9th Cir.2000), with *Burnside v. Kiewit Pacific Corp.*, 491 F.3d 1053 (9th Cir. 2007).
- 63/ See, e.g., Labor Code §§ 515 (computer programming), 515.6 (doctors), and 515.8 (teachers). The IWC may also provide for additional exemptions. Labor Code § 515.
- 64/ Stats 2009, ch. 3.
- 65/ Now 36 U.S.C. § 113.
- 66/ Section 274(a)(1)(C) of this bill would have made a criminal of anyone who "assists, encourages, directs, or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;" among other things.



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