

This PDF is a selection from an out-of-print volume from the National Bureau of Economic Research

Volume Title: A Prelude to the Welfare State: The Origins of Workers' Compensation

Volume Author/Editor: Price V. Fishback and Shawn Everett Kantor

Volume Publisher: University of Chicago Press

Volume ISBN: 0-226-25163-2

Volume URL: <http://www.nber.org/books/fish00-1>

Conference Date: n/a

Publication Date: January 2000

Chapter Title: The Political Process of Adopting Workers' Compensation

Chapter Author: Price V. Fishback, Shawn Everett Kantor

Chapter URL: <http://www.nber.org/chapters/c9814>

Chapter pages in book: (p. 120 - 147)

The Political Process of Adopting Workers' Compensation

There might have been a consensus that no-fault accident compensation would be superior to the erstwhile liability system, but the actual process of enacting workers' compensation involved a complex set of political negotiations both across and within various interest groups and within state legislatures. Because the specifics of the legislation—including benefit levels, state versus private insurance, the administration of the law, the coverage of industries, and the rights of workers to negligence suits—determined how income would be distributed under the new law, reaching compromises on these details were sometimes acrimonious events. In this chapter we use several brief case studies to illuminate how various economic interests were filtered through the political process to shape workers' compensation legislation.¹

Interest groups typically wrote bills that best expressed politically what they desired; therefore, the bills that were debated within state legislatures were often quite diverse. As would be expected, fights developed between interest groups over the specific features the workers' compensation law would contain. If the groups were far apart the disagreements could delay the process of adoption—by two years in Minnesota and over fifteen years in Missouri, for example. Such delays are consistent with Howitt and Winthrope's (1995) theoretical prediction that beneficial policies may not even be brought up for legislative consideration because each group fears that it may end up with its opponent's version of the legislation.

The factions that made up broad interest groups—organized labor, employers, or attorneys—did not all share the same views regarding the proper means to achieve better workplace accident compensation in the early twentieth century. In Minnesota and Missouri, for instance, specific

unions took opposing sides on the passage of workers' compensation. This fight within the union ranks was not really over the general issue of workers' compensation but over the optimal strategy that unions should employ to secure a law that was closest to their ideal. Typically, one faction believed that in order to secure the enactment of workers' compensation unions had to settle for a basic law without state insurance and relatively low accident benefits. The goal then was to later amend the bill to shape the law more in their favor. Another faction argued that the optimal strategy was to seek what organized labor wanted most when workers' compensation was first introduced because amending the bill later would be more difficult. These internal struggles show that strategic political maneuvering can distort how analysts view an interest group's preferences if we take their support for specific legislation at face value. In addition, it is also important to look at the group's expectations of their future successes in influencing the political process.

The case studies allow us to examine more carefully how political nuances influenced the timing and nature of compensation legislation in the 1910s. Employers, organized labor, insurers, and trial lawyers often had far greater power in legislatures than their numbers would suggest. These groups often framed the public and legislative debates, offered information to legislators, flooded hearings with their witnesses, and generally exerted substantial influence in the legislatures as proposals moved from the employers' liability commission through the House, the Senate, and the governor's office, sometimes to a referendum. In many states multiple proposals came out of the employers' liability commission. Legislators favoring specific bills worked hard to get their favored bills sent to the committees where their allies held sway. Within the committees, compromises were struck, but such compromises were overturned by intricate legislative maneuvers on the floor and battles across chambers. Since at each stage the relative political strength of the different interest groups varied, proposals that carried the day in the House might have faced severe obstacles in the Senate, or faced a governor's veto. In a few states the legislature's decision was then subject to a popular referendum, which sometimes led to complicated strategic moves inside the legislature in anticipation of the referendum. In Missouri, for example, some opponents of workers' compensation voted for union-sponsored amendments to the workers' compensation bill, in anticipation that a more extreme bill would be struck down in the voter referendum. In other states, like New York, the legislation was struck down by the courts as unconstitutional, necessitating a major rewrite of the bill or a constitutional amendment. A closer examination of the adoption process in a variety of states highlights the nuances of the political process that shaped workers' compensation laws.

5.1 Ohio

The adoption process in Ohio illustrates several features that were common to many states. An employers' liability commission was established with balanced representation between organized labor and employers' representatives. Although a majority struck a compromise within the commission, organized labor's discontent with the compromise bill then led to two versions of the legislation being sent to the legislature. While the factions in the House maneuvered the two bills through the committee structure, labor supporters rammed their ideal bill through the Senate. Ohio's governor then exercised his veto threat to craft a compromise that was suitable to all sides.²

As part of the political compromise in the passage of the Norris Employer Liability Act of 1910, the Ohio legislature established an Employers' Liability Commission (ELC). As in many other states, the commission included an equal number of employers and labor representatives. The Ohio ELC consisted of five members: W. J. Rohr and W. J. Winans were the labor representatives, George Perks and John Smith represented employers, and J. Harrington Boyd was the nonaligned chair of the commission. The ELC was charged with proposing a bill for consideration by the 1911 legislature. Three main issues became points of contention. The first stumbling block was the issue of how the cost of workers' compensation was to be shared by employers and workers. While in most states there was intense debate over the percentage of wages to be replaced or the maximum weekly benefit, Ohio union officials and employers focused more critically on who would pay the workers' compensation insurance premiums. The second major issue centered on whether a worker, after his accident occurred, would have the right to choose between the guaranteed workers' compensation benefits or suing his employer under negligence liability. Workers wanted the right to choose because if they could prove the employer's negligence, then they could perhaps receive full compensation for their injuries in a court award or settlement. If such a case could not be made, then the worker had the option of selecting the statutory amount of workers' compensation benefits. Employers strongly opposed giving workers this option because it would confront them with the same legal and financial uncertainty from which they were trying to escape. If workers could choose their means of compensation, then employers would be forced to pay damages to all of their injured workers, plus they would still face the possibility of paying very large awards to those workers with strong negligence claims. Thus, under such a legal regime, employers would have gained nothing—their accident costs would have risen and the uncertainty of their payouts would have remained intact. The third issue, and the one that in the years following the adoption of workers' compensation was to become the most contentious of the three in Ohio,

was the choice between state and private insurance of workers' compensation risk.

The internal discussions within the ELC foreshadowed the debate to follow in the 1911 legislature. By a four-to-one majority, the commission settled on proposing a compromise bill to the legislature. The commission's bill called for the creation of a state insurance fund and the elimination of private insurance of workers' compensation, which was very satisfactory from the point of view of the Ohio State Federation of Labor (OSFL). Employers were able to secure their own favored provision, however—the ability to pass 25 percent of their compensation insurance premiums onto workers. Further, if a firm joined the state fund, then its workers were automatically enrolled in the system and thus lost their rights to sue for damages under the common law. Employers, particularly the Ohio Manufacturers' Association (OMA), which had formed in November 1910 specifically to address the issues surrounding workplace liability, strongly supported this workers' compensation proposal.³ Since this bill was to draw the most support from employers, we will henceforth refer to it as the "employer" bill.

The OSFL, while pleased with the state fund proposal included in the majority bill, was deeply disappointed with the remainder of the ELC's bill. They repudiated one of their own representatives to the ELC, W. J. Rohr, for joining the majority after promising his colleague W. J. Winans that he would not.⁴ To ensure that the OSFL stance would be included in the official report of the ELC, Winans submitted a minority report that contained a workers' compensation bill that would have required employers to pay 100 percent of their insurance premiums and would have given workers the option of choosing, after their injury had occurred, between workers' compensation benefits and a negligence suit. We refer below to this bill as the "labor" bill.

In the 1911 Ohio legislature a bitter battle developed over the employer and labor bills coming out of the ELC. Employers, organized labor, and insurers lobbied a legislature that included substantially more progressive reformers than the 1910 special session of the legislature. The Democrats had captured a majority in both chambers and progressives from both parties held 47 percent of the House seats and 32 percent of the Senate seats.⁵ In the House the labor bill was shepherded to the Corporations Committee, chaired by labor supporter George Nye, which reported the bill out of committee favorably, but, in the words of the OMA, "without giving the matter any consideration whatever."⁶ At the same time, the employer bill was sent to the Judiciary Committee, which amended the bill and reported it out of committee without a recommendation. The OMA worried that the OSFL had enough votes to pass the minority bill. Yet the OMA held a trump card because "if the bill had . . . become law it would have had not the least effect, because no employer in Ohio would have

insured under it, and the labor leaders and their allies knew this to be a fact.”⁷

When the labor bill came up for a vote in the House, the allies of the OMA succeeded in sending both of the ELC’s workers’ compensation bills to a special committee. Shortly after the House special committee was announced, the political maneuvering in the House became moot. Senate leader William Green, later president of the American Federation of Labor (AFL), shepherded the labor bill through the Senate by a vote of twenty-six to one with only one amendment, which prevented workers from collecting workers’ compensation benefits if they chose to sue under the common law.⁸ As the House special committee considered the Senate versions of the labor bill and the employer bill, the insurance lobby, operating through the Cleveland Chamber of Commerce, offered up its own workers’ compensation bill without state insurance. Despite insurers’ claims that a state fund would encourage negligent behavior and increase the level of accidents, their efforts were fruitless because the ELC’s employer and labor bills had set the agenda. Hence, state insurance was taken off the table and the focus of the legislative debate was on the share of premiums that employers and workers would pay and on a worker’s right to sue for damages.⁹ As shown in chapter 6, however, the state insurance issue was hotly contested for several years following the passage of workers’ compensation in Ohio.

At this stage Governor Judson Harmon exercised the threat of his veto power, announcing that he favored the employer bill and would veto the labor bill if it were to pass.¹⁰ Harmon, a former judge, then worked closely with the House special committee to craft a compromise that would avoid the constitutional problems highlighted by the New York Supreme Court’s *Ives* decision that struck down New York’s 1910 compulsory workers’ compensation law (see section 5.4). Harmon and the committee wanted to construct a law that was elective technically, but in practice encouraged employers to join the state insurance fund. Their revision penalized employers by stripping them of their three legal defenses if they refused to join the state fund. On the other hand, employers that elected to join the state fund were rewarded in that their workers were prevented from filing negligence suits unless the employer had failed to observe laws requiring the safeguarding of machinery or had caused the worker’s injury through a willful act.¹¹ The special committee also compromised on the percentage of insurance premiums each party would pay. They proposed that employers pay 90 percent of the premiums, workers 10 percent.

When the compromise bill reached the House floor on 26 April 1911, the battle over the two key issues intensified. Republican representative Charles Reid offered an amendment to raise the workers’ burden to 20 percent, but it was defeated seventeen to seventy-four, as legislators with strong labor ties voted unanimously against the amendment. The next day

progressive representative W. B. Kilpatrick unsuccessfully tried the reverse strategy, calling for an amendment that would have required employers to pay 100 percent of the premiums. The conservative Reid also sought to amend the compromise bill by allowing employers to keep their three defenses in liability suits even if they did not join the state fund. The amendment struck at the very heart of Governor Harmon's attempts to entice employers to join the workers' compensation fund. According to the *Cleveland Plain Dealer*, farmers enthusiastically supported Reid's amendment.¹² As in other states, farm interests were strongly opposed to being included in the workers' compensation scheme and the farm lobby in Ohio was deeply worried that the proposed legislation had not yet excluded them from the law's purview.

Although Reid's amendment lost, legislators attempted to appease agricultural interests and small manufacturers. Special committee chairman Ratliff then amended the bill to exempt employers with fewer than five workers, which became a common provision in most states' laws. Representative Gebhart further appealed to agricultural interests by offering an amendment excluding agricultural workers and domestic servants, which was adopted without a vote. However, on the afternoon that the final vote was taken, Attorney General Timothy Hogan advised the legislature that the amendment excluding agriculture would make the law unconstitutional, and the House rescinded the amendment. The final bill, largely unchanged from the special committee's compromise, easily passed the House in a vote of eighty-three to eighteen. It was then signed into law by Governor Harmon.

While the OMA considered the new law "probably the best law on this subject in the United States today," the association expressed some reservations. As can be seen in table 3.1, Ohio's benefits were relatively generous when compared to other states'. Employers felt that increasing their share of the workers' compensation premiums from 75 percent to 90 percent might have made the difference between success and failure of the new law. Of course, no one would know for sure until the state fund formulated its rates.¹³ The Ohio State Board of Liability Awards, the new state bureaucracy created to administer the state's workers' compensation insurance fund, was well aware of this concern. H. R. Mengert claimed that since Ohio's general revenues paid the administrative expenses of the state fund, its workers' compensation rates were below private insurers' employers' liability rates.¹⁴ Indeed, within the next few years, employers agreed to pay 100 percent of the workers' compensation premiums.

5.2 Illinois

The Illinois legislature flirted with a voluntary workers' compensation bill in 1907 before striking it down at the behest of organized labor.¹⁵ By

1910, however, employers' groups and the state federation of labor began pressing for workers' compensation. The Illinois adoption process illustrates the diversity of attitudes that at times developed within the organized labor lobby. Some unions favored workers' compensation while others still sought an expansion of employers' liability instead. As a result, the labor organizations offered competing bills to the legislature. The Illinois experience was also one in which the governor's veto was extremely important. The legislature gave the governor the final choice, as the legislature passed both the workers' compensation bill and an employers' liability bill. To the chagrin of the labor groups that preferred expanded employers' liability, the governor signed the workers' compensation bill into law.

Throughout the period prior to the adoption of workers' compensation, the Illinois Federation of Labor (IFL) pressed for employer liability laws.¹⁶ Employers meanwhile had begun to press for a voluntary system of private insurance. The 1905 legislature established a commission to examine the accident problem and in 1907 it submitted a proposal to establish a voluntary but comprehensive system of private insurance for workplace injuries. The standard plan was for a 50 percent replacement rate for disability and a death benefit equal to the larger of three years' income or one thousand dollars. Employers, however, would pay only half of the premium. Organized labor strongly opposed the plan in the 1907 legislature and instead focused their attention on trying to further expand liability.

Like many other states, Illinois established a commission in 1910 to examine the compensation of workplace accidents and to propose a legislative solution. The commission was balanced with six labor representatives and six employers. While employers and organized labor worked to reach a middle ground on their differences, deep divisions developed within the labor movement. The IFL, with strong internal support from the miners' union, strongly favored workers' compensation. In contrast, the Chicago Federation of Labor (CFL) and the Railway Trainmen's Union (RTU) wanted to modify the negligence system by eliminating the three defenses. They argued that workers' compensation benefits were meager relative to the high awards that could be received under expanded liability, and that expanding employers' liability would force employers to increase their accident prevention activities.

As the workers' compensation commission began to develop a compromise bill, the three CFL representatives on the commission expressed their dissatisfaction with the process and resigned. Governor Charles S. Deeneen, a progressive Republican who endorsed workers' compensation, replaced the walkouts with three IFL representatives and the commission sent forward a bill similar to the model bill proposed by the National Association of Manufacturers. The bill offered expected benefits amounting to 1.48 percent of average annual income, which was near the lower end of the scale for early adopters (see tables 3.1 and B.1–B.4). The CFL

countered by having representatives introduce an alternative bill to eliminate the three defenses in the 1911 legislature. They then ordered their lobbyists not to waste any time on workers' compensation.

The 1911 legislature passed both the commission's workers' compensation bill and the CFL's liability bill, which led to further jockeying for position on all sides. The Illinois Manufacturers Association (IMA), which was a supporter of workers' compensation, thought the benefit levels were too high, so it urged the governor to veto both bills and then reexamine the workers' compensation bill. The insurance companies also favored workers' compensation on the grounds that expanding employers' liability would make it "manifestly impossible to fix the rates with any certainty," while workers' compensation awards would be more easily predictable (Castrovinci 1976, 89). Although the CFL still opposed workers' compensation, in May 1911 it eventually agreed not to oppose the legislation in exchange for a promise from friends of the governor and his allies that their liability bill would also pass. The governor, however, vetoed the CFL liability bill and signed only the workers' compensation bill because this was the wish of the majority of the compensation commission members. The CFL evidently recovered from this political setback because in 1913 it was actively participating in the process to amend the workers' compensation law to make it more beneficial to injured workers.

5.3 Massachusetts

Massachusetts enacted a workers' compensation law relatively early, as leading employers and organized labor all called for its adoption. These groups overcame efforts to delay the legislation and adopted a compromise measure that offered about average benefits among the early adopters. An attempt by organized labor to eliminate casualty insurance of workers' compensation passed the lower branch of the legislature, but insurance companies effectively fought back in the Senate, so that employers had the option of casualty as well as mutual insurance in the final compromise version of the bill.

In 1908 Massachusetts established opportunities for workers and employers to sign *ex ante* contracts that seemed to capture the essence of the workers' compensation idea. The benefit levels were to be decided by the state board of arbitration and conciliation in Massachusetts, but the administrative costs to workers and employers of submitting contracts for approval were onerous. The Massachusetts Commission for the Compensation for Industrial Accidents (1912, 14–17) found that no one submitted contracts for approval in Massachusetts because the one-year limit on contract duration "rendered it undesirable for employers to formulate plans and to incur the trouble and expense necessary to operate them."

By 1910 there was widespread interest in workers' compensation in

Massachusetts. The New England Civic Federation, the Boston Chamber of Commerce's Committee on Industrial Relations, and the Massachusetts State Branch of the AFL (MSBAFL) all expressed interest in enacting a workers' compensation bill.¹⁷ They were worried about the gap between what employers were paying in premiums and what workers actually received and the increasing presence of bad feelings between employers and employees. As in other states, however, there was disagreement about the specifics of the legislation. The Boston Chamber's Committee on Industrial Relations drafted its own bill, as did the MSBAFL. Asher (1969) claims that there was substantial disagreement across unions about the precise nature of the bill. Pressure from both the Boston Chamber of Commerce and organized labor forced the legislature to establish a commission to report a bill to the 1911 legislature.¹⁸

In the commission's hearings the chairman stated that only one in fifteen injured employees received any reasonable award and that employers and employees were unanimously dissatisfied with the current system. They drafted a bill that offered benefits that were in the mid-range of benefits for early adopting states: benefits of 50 percent of the wage, with a minimum of four dollars and a maximum of ten dollars per week, a two-week waiting period, and a death benefit of three hundred times the weekly payment. Labor leaders uniformly approved the bill, although they expressed minor dissatisfaction with the two-week waiting period. Employers objected to specific features of the bill. Some still sought contributory negligence, while small employers in risky industries worried about the cost of the system and employers in low-risk industries sought to reduce the waiting time to allow some of their workers to obtain benefits for their injuries.

In January 1911 the commission argued in favor of postponing legislative consideration of the bill, but Governor and former manufacturer Eugene Foss, the Boston Chamber of Commerce, and organized labor actively pushed for passage of some form of legislation. The major battles fought over the legislation centered on the issue of state insurance, as three bills were sent to the legislature in February 1911. The bill that commission chairman Lowell proposed allowed employers to join a mutual insurance fund or to self-insure. A second bill written by Magnus Alexander proposed mutual insurance, whereby both workers and employers contributed. Organized labor disliked this option and proposed through representatives Saunders and Parks to establish a single mutual insurance company, the Massachusetts Employers Insurance Association (now Liberty Mutual), which would operate privately after receiving some initial financing from the state. All three bills barred casualty insurance. After several hearings a joint Senate-House committee endorsed the Saunders-Parks bill in the House. The bill passed the House on July 10 without a recorded vote.

In the Senate the bill met with strong opposition from “cautious” senators and an effective insurance lobby. In a seventeen-to-sixteen vote the Senate refused to table the bill. Senators under pressure from the casualty insurance lobby amended the bill by a vote of twenty-nine to nine, allowing employers to insure with any stock or mutual insurance company, despite strong opposition to the amendment from labor unions. Asher (1969, 471–72) claims that the insurance lobby would have blocked any further action if the amendment had not been included. After the *Ives* case in 1911 had declared New York's 1910 hazardous workers' compensation bill unconstitutional, legislatures were sensitive to the courts' treatment of workers' compensation legislation. The legislature stayed in session long enough to receive the Massachusetts Supreme Judicial Court's favorable opinion on the bill.

Asher (1969) claims that the 1911 Massachusetts legislature enacted more labor legislation than in any previous period, including an eight-hour act for public employees, a fifty-four-hour law for women and minors, and a moderate anti-injunction law. Organized labor, in tandem with the relatively progressive legislature, was able to reach a compromise with employers so that the workers' compensation law would offer about the average benefits for the period. On the other hand, labor's attempts to eliminate casualty insurance were overcome by a relatively strong insurance lobby.

5.4 New York and the Role of the Courts

Robert Wesser (1971) and Robert Asher (1971) show that the process of adopting workers' compensation in New York involved political infighting and compromise both within and across interest groups. Such a finding is common for most states, so rather than summarize their discussions here, we focus our attention on the role the New York Court of Appeals played in influencing workers' compensation across the nation.

New York led the way for broad-based workers' compensation laws. In 1910, after substantial debate, New York adopted two versions of workers' compensation: a compulsory law for extrahazardous occupations and a voluntary law for all firms. In January 1911 a lower court decision had supported the constitutionality of the compulsory law. On 23 March 1911, however, New York's highest court unanimously declared the compulsory law for hazardous employment to be unconstitutional in *Ives v. South Buffalo Ry. Co.* (124 N.Y.S. 920 [1911]). The court held that “compulsory compensation for all injuries, regardless of fault, imposed on employers a ‘liability unknown to the common law,’ which ‘constituted a deprivation of liberty and property’ under the due process clauses of the New York Constitution and the Fourteenth Amendment” (Asher 1971, 361; see also U.S. Bureau of Labor 1911, 110).

New York still had the voluntary law in place after the court decision. Workers and employers could sign workers' compensation contracts with benefit levels similar to those established under the compulsory law. Few employers and workers seemed interested in the voluntary law, however, partly because there were high costs to registering the contracts and partly because they anticipated that a compulsory law might soon be enacted. By July 1913 only one firm had consented to a voluntary agreement and only 38 of their 440 employees had signed contracts. The administrative costs of setting up the voluntary contracts were prohibitive because the employer and each employee had to sign and submit written agreements to the county clerk, which was a far more cumbersome system than the standard methods of election in later workers' compensation laws (Clark 1914, 116–17).

The supporters of workers' compensation focused their efforts on obtaining a constitutional amendment to allow a compulsory workers' compensation law. They tried to pass an amendment in 1911 after the *Ives* decision was announced, but with the limited time available the various supporters could not agree on an amendment before the end of the session. By 1912, the leading labor, employer, and insurance groups were pressing for a constitutional amendment. Five bills were proposed to the legislature. The New York State Federation of Labor (NYSFL) pressed for an amendment that would have required employers to insure through a state fund and that would have also established state old-age and sickness insurance plans. Insurers, the New York Manufacturers' Association, and other employers, in contrast, pressed for the Bayne-Phillips compromise amendment, which would allow the state to make workers' compensation compulsory but did not require employers to insure with a state fund. The New York Association for Labor Legislation (NYALL) decided not to support the NYSFL amendment because they believed that an amendment requiring state insurance and old-age and health insurance would not be supported by the electorate. The Bayne-Phillips amendment passed the legislature in 1912 and in 1913 and was overwhelmingly approved by the electorate in fall of 1913 (Asher 1971, 565).

Throughout 1913 there had been substantial debates about other details relating to workers' compensation. As in other states, labor pressed for state insurance and high benefits, while employers and insurers pressed for lower benefits and the inclusion of private insurers in the system. An attempt at a compromise during May's regular session failed. Finally, after the compulsory amendment was passed in fall 1913, a special session was called. Democrats who had lost their majority for the upcoming legislature wanted to insure the passage of workers' compensation. Governor Martin Glynn strongly supported the more liberal workers' compensation, and the NYSFL and the NYALL had decided that it was futile to bar the insurance companies from the system. As a result, the compromise legisla-

tion with high benefits and allowing for both state and private insurance was passed in December 1913 (Asher 1971, 565–93).

Although the *Ives* decision slowed the ultimate adoption of a compulsory law in New York, it did not slow the adoption of workers' compensation in most other states. The decision in the case was handed down in the middle of the legislative sessions for a number of states that adopted workers' compensation in 1911. After *Ives*, Washington went ahead and adopted its own compulsory workers' compensation law, which the Washington Supreme Court later declared constitutional on the grounds that the law was a reasonable regulation that corrected an existing "evil" (U.S. Bureau of Labor Statistics 1913b, 78). In Massachusetts the 1911 legislature submitted the bill to the supreme court for a ruling before passing it (*ibid.*, 76). The solution to the problem in the vast majority of states was the same as that followed by the Ohio legislature, described above. Most states altered the proposed workers' compensation bill to allow employers to choose whether to join the workers' compensation system. Those that did not elect workers' compensation, however, gave up the assumption of risk, fellow servant, and contributory negligence defenses in negligence liability suits. States like Ohio and California later adopted constitutional amendments that allowed them to move from elective to compulsory statutes.

5.5 Minnesota

In Minnesota there was early agreement among employers, workers, and lawyers on support for workers' compensation. However, disagreements between the interest groups over the details of the legislation led Minnesota's employers' liability commission to follow other states in proposing multiple bills to the legislature. The disagreements across interest groups were matched by disagreements among the factions within each interest group. The internal disagreements slowed the adoption of workers' compensation by two years. Within the labor movement the battle was over whether to try to obtain labor's optimal bill on the first try, or to try to establish the principle of workers' compensation and then work on amending the key features later. After extensive legislative struggles, the Minnesota State Federation of Labor (MnSFL) followed the latter strategy. They agreed to support a bill that favored employers, on the grounds that it was important to obtain workers' compensation. They then proceeded to press for amendments over the next decade.¹⁹

By 1909 workers, employers, and lawyers began to unite in their efforts to adopt workers' compensation legislation. In December 1908 a group of eleven employers met to form the Minnesota Employers' Association (MEA) because of the increased threat of their losing the common law defenses in personal injury lawsuits.²⁰ The MEA set a favorable tone for

the coming debate, arguing that workers' compensation would provide injured workers with quick remuneration without expensive litigation, while keeping the employers' accident costs stable. The MEA suggested that organized labor, the Minnesota State Bar Association (MSBA), and employers join together in presenting a unified argument before the legislature.

In January 1909 the central players in the effort to enact workers' compensation met for five hours in the Commissioner of Labor's office to decry the "inhuman method" of accident compensation that prevailed in Minnesota.²¹ George M. Gillette, president of the MEA, William McEwen, Minnesota's Commissioner of Labor and Secretary-Treasurer of the MnSFL, representatives of various railroad brotherhoods, and Hugh Mercer, the chairman of the MSBA's special committee on workers' compensation, developed a united course of action during the meeting. They filed a formal petition with Governor John A. Johnson, requesting him to seek legislation to establish a nonpartisan, three-person commission to investigate the employers' liability system and to present workers' compensation proposals to the 1911 legislature.²² Gillette of the MEA and McEwen of the MnSFL agreed that all efforts to secure workers' compensation would be channeled through the proposed commission. McEwen made a "gentleman's agreement" with Gillette that organized labor would discontinue their efforts to amend the employers' liability laws. The MnSFL's unambiguous goal was now workers' compensation.²³

After some debate over who would select the three-man commission, the 1909 legislature granted the governor's request for a commission and legislation requiring employers to report industrial accidents to the Department of Labor and Industries.²⁴ The governor made the obvious choice of William McEwen, George Gillette, and Hugh Mercer, who were clearly the leaders of the workers' compensation movement in Minnesota.²⁵ Translating their mutual dissatisfaction with the traditional negligence system into a workable compensation system proved more difficult than the three commission members had originally thought. The commission members' interests split, with labor leader McEwen and attorney Mercer agreeing on one form of legislation while Gillette formulated his own plan. Furthermore, whatever mutual respect McEwen and Gillette had for one another at the beginning of the commission's work had by late 1910 become strained.²⁶

Gillette refused to join the majority for three primary reasons. First, the majority bill would have made workers' compensation compulsory for all employers. Gillette (1911a) argued that the compulsory feature of the law was likely to be unconstitutional; therefore, he offered the same alternative adopted in Ohio and many other states, making the law elective in fact, but nearly compulsory in practice because any employer who opted out of the system would have been stripped of the three common law defenses.

Second, the majority bill required employers to pay full medical coverage for the first two weeks of injury, up to one hundred dollars. Gillette claimed that no matter how minor the accident, hospitals and doctors would prescribe treatment in order to extract the full one hundred dollar benefit. Therefore, his bill specified that an employer was only required to furnish "reasonable medical and surgical first aid." Third, Gillette sought to reduce employers' insurance costs. His bill offered the same waiting period, the same percentage of wage replacement, and the same time frame for disbursement as the majority bill. However, he sought to cap an employer's liability for a single accident, like a mine explosion, at fifty thousand dollars. To reduce employers' insurance costs, Gillette further recommended that employees contribute 20 percent of the cost of the insurance, not exceeding 1 percent of the workers' wages.²⁷ With such widespread disagreement among the interest groups that supposedly wanted workers' compensation the most, the legislature failed to pass any compensation law in the 1911 session.²⁸

It was not only because of divisions among interest groups that workers' compensation did not fare well in the 1911 legislature, but also because of disagreements within the respective interest groups. On the employers' side, the MEA decided not to support Gillette's version of the bill because of "diversity of opinion on the subject."²⁹ A similar split developed within organized labor. McEwen discovered that his own advisory group of fifty labor leaders was dissatisfied with the benefits in the bill that he and Mercer had proposed.³⁰ McEwen argued that the best strategy was to get some form of workers' compensation and amend it later to obtain higher benefits, but the MnSFL refused to support McEwen's bill unless the benefits were raised. The railroad brotherhoods, in both 1911 and 1913, wanted the negligence liability status quo since they were doing relatively well under the common law.³¹ Yet another bill, pertaining to dangerous industries, was proposed by organized labor's legal counsel, Minnesota Supreme Court justice Thomas D. O'Brien. O'Brien's bill gave a worker the choice, after a workplace injury had occurred, between accepting workers' compensation or pursuing a negligence claim against his employer, who could not invoke assumption of risk and fellow servant defenses and was allowed only a modified version of the contributory negligence defense.³² Employers ardently opposed this bill because, as we note in chapter 4, it defeated one of the primary purposes for employer support of workers' compensation.³³ They still would have to pay workers' compensation benefits to the vast majority of injured workers, no matter who was at fault. Meanwhile, they also would be forced to pay large sums to defend against the negligence suits filed by workers who thought they could get higher benefits through a negligence claim.

With such widespread disagreement among and within the key interest groups, the legislature failed to pass any compensation law in the 1911

session. By late 1912, however, employers and labor representatives had agreed upon a course of action for the 1913 legislative session. The MEA proposed a law that closely resembled New Jersey's law, which had been enacted in 1911 and declared constitutional.³⁴ The Bar Association continued its support of the commission's majority bill from 1911 which made coverage compulsory, but organized labor was willing to join the employers in supporting the New Jersey law because it was seen as "a fair law and guarantees adequate protection at the minimum of cost."³⁵ Although the New Jersey law was elective in nature, 90 to 95 percent of the employers were choosing the new system because if they refused the law, they would have been stripped of their common law defenses in a negligence suit.³⁶

While employers and labor representatives had agreed on a bill in principle, several aspects of the bill that employers had written posed serious threats to its passage. Various factions within organized labor adamantly opposed four provisions: authorizing employers to pass 20 percent of the insurance costs directly onto workers; a clause allowing for compensation only if the worker was not "willfully negligent" at the time he was injured; a lower set of benefits for the dependents of injured workers living outside the United States; and a provision allowing benefits to be paid in a lump sum without court supervision.³⁷ Labor was also dissatisfied with the level of benefits offered in the MEA-sponsored bill, suggesting instead that maximum weekly benefits for death and permanent disability be increased from ten to fifteen dollars, the length of benefits increased from 300 to 333 weeks, and the overall maximum benefit boosted from three thousand to five thousand dollars.³⁸

Internal conflicts within organized labor continued as the employers' proposed law, which mimicked the low benefits from the New Jersey law of 1911, worked its way through the 1913 legislature. While the MEA and the MnSFL had essentially agreed to set aside their dispute with one another in order to enact a workers' compensation law, a feud within the labor movement grew more heated as the bill reached a final vote in the Senate. The MnSFL and the St. Paul Trades and Labor Assembly (SPTLA) took the position that in order for the principle of workers' compensation to be introduced in Minnesota, sacrifices had to be made. Without compromising their principles—such as having industry bear the de jure full cost of the insurance and the removal of all notions of negligence—the MnSFL was willing to accept lower benefits in the short term, but with the full expectation of amending the law in future legislatures.³⁹ The low benefits that the MnSFL was willing to accept, however, incited calls that they were "selling out the cause of the workers to their employers."⁴⁰ The two most vocal opponents of the compensation bill were the railroad brotherhoods, who were concerned that the new law would preempt their rights under the Federal Employers' Liability Acts of 1906 and

1908, and the Minneapolis Trades and Labor Assembly (MTLA).⁴¹ The MTLA called the proposed bill the “most outrageous piece of legislation attempted to be passed against the interests of the working people of the state” and they “deplore[d] the fact that certain representatives of labor seemed to be satisfied with anything the employers handed them.”⁴² The SPTLA scolded the MTLA for favoring the “upper class of workers” with its attempt to secure very generous benefit levels immediately: “Shame on such selfishness! If this is unionism and fraternity the less we have of it the better.” Like the MnSFL, the SPTLA believed that “half a loaf is better than no bread at all.”⁴³

The marked-up bill that emerged from the Senate Labor Committee eliminated farm labor and domestic servants from coverage, raised the minimum weekly benefit from five to six dollars, guaranteed foreign and domestic dependents the same schedule of benefits, eliminated any insurance contributions by workers, and removed the “willful negligence” clause. As a compromise, the MEA agreed to the minimum compensation and worker contribution amendments, but not the others.⁴⁴ Instead of allowing the labor committee’s amendments to delay the passage of workers’ compensation any further, however, the MEA decided to take no further action to hinder the bill’s progress in the legislature. Gillette finally conceded that the Senate bill was “a satisfactory one and the best that could be obtained.”⁴⁵

Despite the opposition of some labor groups, some employers, and “ambulance chasing lawyers,” workers’ compensation passed the Senate unanimously.⁴⁶ As the bill moved to the House, “one of the most interesting fights ever witnessed in the legislature” ensued.⁴⁷ For six hours Representative Ernest Lundeen, a Republican and avid supporter of labor issues, cheered on by labor representatives and socialists sitting in the gallery, proposed a litany of labor-supported amendments that effectively served as a filibuster.⁴⁸ “Isn’t it a travesty on justice to ask you to pass this measure ostensibly for the benefit of the workingmen but urged by the big employers of the state?” Lundeen asked rhetorically.⁴⁹ Lundeen and representatives from districts that were more heavily unionized were able to secure five amendments to the Senate’s bill, but only two significantly affected the compensation that workers would have received if injured: (1) if workers were disabled for more than thirty days, they were to be retroactively compensated for the first two weeks of not receiving benefits because of the waiting period, and (2) an increase in the medical benefits from \$100 to \$195. In fact, the House had rejected an amendment to raise the medical benefits to \$200, but in an effort to shutdown Lundeen’s attacks on the bill, labor leader McEwen was able to orchestrate support for the \$195 maximum. Two other important amendments failed to pass—an increase in the weekly benefits from \$10 to \$15 and the exclusion of all (not just interstate) railroad workers from coverage.⁵⁰ The House passed

the workers' compensation bill, with its amendments, by an overwhelming 102 to 6.⁵¹

The benefit levels established by Minnesota in 1913 were relatively low, ranking near the bottom among the states that had adopted workers' compensation by that year (see tables 3.1, B.1–B.4). Because the law provided such minimal benefits, the MTLA concluded that “the compensation law really is a joke, if a pathetic one.”⁵² McEwen admitted that the “new Workmen's Compensation law falls far short of our ideal . . . yet . . . it was the very best that could have been passed.”⁵³

Although the MnSFL (1913, 68) officials were pleased to finally establish workers' compensation as the first phase of their long-term strategy, they soon began phase two. They sought and eventually succeeded in obtaining amendments to the law that would raise Minnesota's benefit levels over the next few years.⁵⁴ Meanwhile, they stated emphatically that “no satisfactory solution to the question of workingmen's compensation can be had except through the medium of state insurance.”⁵⁵ The debates over state insurance are described more fully in the next chapter.

5.6 Missouri

The sixteen-year struggle for the adoption of workers' compensation in Missouri vividly illustrates the importance of political institutions to the successful enactment of public policy. The referendum and initiative mechanism that existed in Missouri created an additional institutional hurdle that the workers' compensation law had to clear. Not only did the relevant interest groups have to agree on a legislative outcome, but so did the electorate. Thus, opponents of workers' compensation, anticipating that whatever emerged from the legislature would have to meet the approval of voters, sought to saddle the legislative bills with amendments that would undermine their chances of success in a referendum. The adoption process in Missouri illustrates how the details of even very popular legislation can be shaped by the political process. Finally, as in Minnesota, disagreements internal to broad interest groups also contributed to the delay in adoption of the law. In fact, the internal struggle within organized labor over the details of workers' compensation in Minnesota pale in comparison with what happened in Missouri.⁵⁶

The impetus for workers' compensation in Missouri came in 1910 when the governor appointed a commission to investigate the workings of the employers' liability system and the feasibility of a workers' compensation law. The commission prepared an employers' liability measure for the 1911 session, which was subsequently killed in the House judiciary committee, and requested that the legislature create its own investigative commission. The General Assembly's 1911 commission, with the mandate to report a bill to the 1913 legislature, included legislators from both chambers and

citizens representing organized labor, manufacturing, insurance, and financial interests. Since employer and labor representatives could not strike a compromise—labor asking for unlimited benefits and state insurance and employers asking for the exact opposite—no serious legislation was introduced in 1913. The Senate therefore appointed another commission that was to report to the 1915 legislature. The commission held months of hearings and traveled to several states. In the end they proposed that Missouri enact an elective workers' compensation act, establish an industrial commission, provide for private mutual insurance, and impose a 5 percent tax on insurance premiums to support the industrial commission (Missouri Bureau of Labor Statistics [MBLS] 1918–1920, 206). Although the Senate proposal received a favorable recommendation from the insurance committee, the whole chamber never acted upon the bill. The Missouri State Federation of Labor (MoSFL) and manufacturing interests could agree that workers' compensation in principle was worth pursuing, but the groups could not agree on the particulars of a law. The 1915 session ended with no legislation because the parties disagreed on the levels of accident payments, waiting periods, whether occupational disease should be covered, and organized labor's central goal, state insurance (MBLS 1918–1920, 206).

After two legislative sessions without a compromise with employers, Missouri's main unions began to split. In 1917 both the MoSFL and the St. Louis Building Trades Council (SLBTC) presented separate bills before the legislature and a third measure presented by a group of employers was "refuted by organized labor" (MBLS 1918–1920, 187). With divisions deepening between organized labor and employers and within labor, the session ended with the legislature far from a compromise compensation law.

Realizing that their efforts to adopt a workers' compensation law favorable to them were diminished if they did not present a united front, the two major organized labor groups tried to reach a consensus at the MoSFL's annual convention in 1918. After three days of negotiations with no settlement, the MoSFL, the SLBTC, and the Kansas City Building Trades Council (KCBTC) empowered a special compensation committee to draft a bill for the 1919 legislature (MBLS 1918–1920, 188). The special committee not only included representatives from the SLBTC, the KCBTC, and the MoSFL, but also the Commissioner of the Missouri Bureau of Labor Statistics William H. Lewis and his Supervisor of Statistics A. T. Edmonston (MBLS 1918–1920, 188). What became known as the "Labor Bill" contained organized labor's main objectives: a monopoly state insurance fund and generous maximum benefits, in this case they asked for no ceiling (MBLS 1918–1920, 204).⁵⁷

In 1919 the House passed an amended version of the Labor Bill, imposing an eighteen-dollar weekly maximum, but keeping the state insurance feature intact. The House bill was subsequently killed in the Senate Work-

men's Compensation Committee and two efforts by senators sympathetic to the MoSFL to place the bill on the calendar failed. The Senate then passed its own bill (actually a committee substitute bill), which was later adopted by the House and signed by the governor. The Senate bill was much more amenable to employers' interests, placing a maximum of fifteen dollars on weekly benefits and eliminating public insurance.

MoSFL president R. T. Wood claimed that when the Senate bill arrived in the House "if the bill had been amended by the dotting of an 'i' or the crossing of a 't' it would have been killed by an adverse committee upon its return to the Senate. The only possible chance to pass a compensation law at this session was to pass the substitute through the House without amendment." Wood reasoned that if state insurance and high benefits were not politically feasible, then the goal should be to get the best workers' compensation bill possible and to seek prolabor amendments in subsequent legislation. He assured the SLBTC and the KCBTC that "we [MoSFL] stood by the building trades people in a last-ditch fight which almost resulted in the defeat of all compensation measures by the Legislature. We could at any time have obtained the passage of a bill acceptable to the other labor interests of the State, but we fought with the building trades to the last. After the fight had failed and we began a last desperate struggle to get compensation on the statutes, they deserted us instantly and made an open fight on the floor of the House against the passage of the Senate substitute. They were defeated and the bill was passed almost unanimously."⁵⁸

The building trades adhered to an all-or-nothing strategy, either workers' compensation with state insurance and high maximum benefits or no law at all. The building trades and some other union elements, in fact, joined damage-suit attorneys, who clearly had an interest in striking down workers' compensation, in circulating a petition to put the legislative act before the voters in a November 1920 referendum.⁵⁹ The strategy was successful. Voters rejected the 1919 workers' compensation law by a close 52.2 to 47.8 percent margin.⁶⁰

By 1921 in Missouri, the MoSFL, the Associated Industries of Missouri (AIM), and other employer organizations were cooperating for the passage of another workers' compensation law.⁶¹ The act that was ultimately adopted had many similarities to the one enacted in 1919, but it added a state fund to compete with private insurance and raised the weekly maximum benefit from fifteen to twenty dollars. The damage-suit lawyers in concert with the building trades councils again forced a referendum. Missouri voters once again struck down workers' compensation by a comfortable margin, 55.2 to 44.8 percent. The lawyers also added an initiative to the ballot that would have abolished the fellow servant defense, substituted comparative negligence for contributory negligence, and left assumption of risk up to the jury.⁶² Moreover, if accepted, the initiative would

have repealed the 1921 legislative act if both measures passed in the November 1922 referendum (MBLS 1921–1922, 936). Voters, however, soundly defeated the lawyers' alternative (79.9 to 20.1 percent).

The inclusion of state insurance, which helped kill the law in the referendum, was actually a last-minute floor amendment that was widely supported by opponents of workers' compensation. By 1921 legislators could expect that any legislative act would be challenged in a referendum. Thus, by saddling workers' compensation with state insurance, which voters opposed, the opponents hoped to ensure the law's defeat at the polls. In an analysis of the roll-call voting on the state insurance amendment in the House of Representatives, we found that members of the Committee of Commerce and Manufactories, which was dominated by agricultural interests, and representatives whose districts supported the damage-suit attorneys' initiative were more likely to support the state insurance amendment (see Kantor and Fishback 1994a, 288–91).

By 1923 the AIM was claiming that employers' liability was reaching a crisis, with some insurance companies actually pulling out of Missouri. Despite the impetus for workers' compensation, the General Assembly failed to enact new workers' compensation legislation in the 1923 session.⁶³ Lindley Clark (1925, 602) reported in the *Monthly Labor Review* that the chances of legislation were wrecked by organized labor's demands for an exclusive state insurance system. Despite its losses in the legislature, the MoSFL managed to put an initiative on the November 1924 ballot that included organized labor's demands without compromise: an exclusive state insurance fund and maximum weekly benefit levels of thirty dollars, double the maximum benefits in neighboring Illinois and Kansas.⁶⁴

The AIM and other industry groups actively opposed labor's proposal, sending out two million pieces of literature and placing advertisements in five hundred newspapers and magazines.⁶⁵ Opponents urged support from a wide range of interests. Since benefits were set so high, they argued that manufacturers would leave St. Louis and Kansas City for neighboring states.⁶⁶ Since labor's proposal would have required firms with as few as two employees to insure, AIM gained support from small business owners who otherwise might not have been directly involved in workers' compensation. Finally, and probably with most success, opponents appealed to the taxpayer since organized labor proposed setting up an expensive commission of five members with salaries of \$6,000 each, creating a monopoly state insurance fund, and appropriating more than \$4 million to start it.⁶⁷ Not surprisingly, the initiative was soundly defeated, 72.6 to 27.4 percent.

Organized labor's resounding defeat in 1924 and employers' increasing urgency to adopt a workers' compensation law led to a compromise in the 1925 legislative session (Clark 1925, 602).⁶⁸ The 1925 act was among the more liberal laws at the time. No other state's accident benefits exceeded the 1925 act's two-thirds of the wage, and its twenty dollars per week

payment ceiling was higher than ceilings in neighboring Kansas and Illinois. The generous benefit ceiling put Missouri fifth (tied with six others) among all workers' compensation states, while its three-day waiting period tied Missouri for third among the states (U.S. Bureau of Labor Statistics 1926a, 23, 26). Without state insurance, the bill also gained support from the insurance industry. The bill was designed to build a winning coalition on other margins as well. The number of commissioners was cut, as were their salaries, and public employees were covered under the law only if individual municipalities decided so (U.S. Bureau of Labor Statistics 1925b, 1329–30). Thus, the general public's worries about paying more taxes for a larger bureaucracy or an insolvent state insurance fund were assuaged. With these concerns addressed, the electorate supported workers' compensation in Missouri by a more than two-to-one margin.

5.7 Summary

Looking at the details of how workers' compensation was actually adopted in a few representative states illustrates several common themes that emerged in the cross-state quantitative comparisons in the previous chapter. Employers, workers, and insurers all supported the general concept of workers' compensation, but harsh debates developed over specific features of the law. Employers and workers battled over the level of benefits in the law and the issue of whether workers could retain the right to choose to sue under negligence liability after they had been injured. As will be shown in the next chapter, organized labor and insurers fought harsh battles over the issue of state insurance of workers' compensation risk, with employers taking both sides of the issue.

The case studies provide some general lessons about how public policy is actually transformed from ideas into legislation. First, most legislation is complex with multiple attributes, each of which might determine a group's support or opposition to the bill. Because workers' compensation involved a complex set of parameters, opposition to legislation was usually directed at specific benefit levels or the choice between private and state insurance, and not opposition to the general concept of switching to no-fault liability. Although it is possible that interest groups might have disguised their opposition to the general concept of workers' compensation in the form of opposition to specific features of the bill, it seems unlikely that this was true. In the vast majority of states, opposing interest groups compromised relatively quickly in passing a workers' compensation law.

Second, the choices that state legislators made were framed by special interest groups in ways that cannot be determined by just examining the final version of the law. Lobbyists representing unions, employer groups, or insurers offered their ideal bills to the states' liability commissions and legislatures, but at the same time each group was staking out a claim that

served as an initial point in forthcoming legislative negotiations. It was the legislators' task to then work out a series of compromises. The compromises were determined in part by the political strength of the various interest groups, but as the case studies illustrate, there were other more subtle aspects of the legislative process that dictated the ultimate shape workers' compensation would take.

Third, legislative institutions were extremely important in determining how the law emerged from the political process. The membership of the committee to which the bill was initially assigned determined not only what type of bill would come out of the committee, but also more importantly whether the bill would be passed on for the whole chamber's consideration. Both houses of the legislature and the governor all had veto power over bills, which was important during the Progressive Era because one chamber might have been more "progressive" than the other and willing to pass legislation that more aggressively reformed workplace accident compensation. For example, the Ohio Senate in 1911 and the Minnesota House in the late 1910s tended to be more supportive of the union's agenda for workers' compensation, while in the other chambers employers and insurers carried much more influence. The bills that were proposed by each of the houses reflected their respective agendas, but in order for workers' compensation to succeed politically a compromise was necessary between the two chambers. In some cases the threat of a governor's veto kept legislators on middle ground between the various interest groups. In Illinois, in fact, the governor made the ultimate choice between expanding employers' liability and establishing workers' compensation.

Fourth, although workers' compensation was widely supported because of its anticipated benefits to a broad group of interests, sometimes disputes between these very same interest groups over specific features of the legislation caused delays in its adoption. Such a finding lends support to Howitt and Wintrobe's (1995) prediction that socially beneficial legislation may not even come up for legislative consideration because each side fears it may get stuck with its opponent's favored policy. Thus, if interest groups' initial proposals were meant as a starting point in the political negotiations, these proposals may have seemed relatively "radical" and a fear that the other side was unwilling to compromise may have caused either side to push for a delay in the law's adoption. Such delays slowed the adoption of workers' compensation by two years in Minnesota and by eight in Missouri. The Missouri case is particularly unusual because even after the interest groups were able to negotiate a compromise in the legislature in 1919 (after having begun the process in 1911), the need to satisfy the electorate led to another set of delays that lasted another seven years.

Finally, the case studies caution against thinking that seemingly cohesive interest groups have the same set of objectives. In Illinois, Minnesota, and Missouri labor unions took opposing sides on the passage of workers'

compensation even though all agreed that the overall idea behind the legislation was an improvement on the status quo. Closer inspection shows that the fight among unions was not truly over the general issue of workers' compensation, but actually over the optimal strategy to secure the features of the law that the unions most desired. Typically, one group took the stance that passing a basic bill without state insurance and lower benefits was necessary to get workers' compensation enacted and then it would be relatively easy to amend the bill to obtain the better benefits. The other side argued that the optimal strategy was to seek every desired feature when workers' compensation was first introduced on the grounds that amending the law would be extremely difficult later. The case studies therefore show that in examining the positions of interest groups it is often not enough to show that the new legislation is better than the status quo. It is also important to look at the groups' estimates of the feasibility of amending the legislation later. The adoption of legislation only starts the process of change in that public policy arena, as interest groups with a stake in the legislation continue to apply pressure to shape the intricate details of the law to fit their own demands. For example, when Minnesota enacted its workers' compensation law in 1913, it was among the stingiest in terms of accident benefits. Organized labor, however, was highly successful in lobbying to increase the benefits through amendments of the law later in the decade, and by 1921 the state was guaranteeing workers accident benefits that were among the most generous in the country. Because the features of the workers' compensation law were relatively controversial when the legislation was first proposed, researchers must be cautious in ascribing success or failure to particular interest groups because the law took one form or another. The initial version of the law was simply a starting point for future political wrangling and compromise.

Notes

1. We have benefited tremendously from a series of other scholars' strong case studies. See Tripp's 1976 study of Washington; Asher's 1971 study of Massachusetts, Minnesota, New York, Wisconsin, and Ohio; Reagan's 1981 and Mengert's 1920 studies of Ohio; and Castrovinci's 1976 study of Illinois.

2. For additional descriptions of the introduction of workers' compensation in Ohio, see Fishback and Kantor (1997), Asher (1971, 541–58), Reagan (1981), and Mengert (1920).

3. The OMA originated in Columbus on 10 November 1910 when a group of manufacturers met to discuss the first workers' compensation proposal in the state. Members included B. F. Goodrich, Youngstown Sheet and Tube, Republic Steel, Goodyear Tire, Jeffrey Manufacturing, Dayton Manufacturing, Mosaic Tile, Owens-Illinois Glass Co., and Columbus Iron and Steel. Ohio Manufacturers' Association *Records*, p. 2.

4. Winans (1910, 291–92) and Rohr (1910, 307–8). On organized labor's repudiation of Rohr, see *Ohio State Journal*, 23 March 1911; *Toledo Union Leader*, 24 March 1911; Byrum and Ohio State Federation of Labor, 6. Winans had been the legislative representative for the OSFL and it was discovered later that the OSFL was paying him while he was on the commission. The rest of the commission was not being compensated because the authorizing law for the commission called only for the payment of expenses. In fact, Governor Harmon had contributed five thousand dollars of his own money to pay the commission's expenses. See *Ohio State Journal*, 11 May 1911, and Nichols (1932, 145).

5. In the Senate the progressives had 11 certain votes (9 Democrats, 2 Republicans) and conservatives had 17 (5 Democrats, 12 Republicans). The remaining 6 were middle of the road. In the House there were 68 Democrats and 48 Republicans. Of this group there were 55 progressives (44 Democrats, 10 Republicans, and 1 independent), 43 conservatives (12 Democrats, 31 Republicans), and 12 Democrats and 7 republicans affiliated with neither wing. Speaker of the House Vining was a compromise candidate. The logjam of progressive legislation was broken on 1 May 1911 when bribery charges were filed against some of the most conservative members. See Warner (1964, 266–75, 282–83).

6. Ohio Manufacturers' Association *Records*, Secretary's Report, November 1911; Ohio House of Representatives *Journal* (1911, 399).

7. Ohio Manufacturers' Association *Records*, Secretary's Report, November 1911; Ohio House of Representatives *Journal* (1911, 541).

8. *Ohio State Journal*, 23 March 1911, and Ohio Senate *Journal* (1911, 288).

9. *Ohio State Journal*, 18 April 1911, and *Cleveland Federationist*, 20 April 1911.

10. *Ohio State Journal*, 29 March and 18 April 1911, and *Cleveland Federationist*, 30 March 1911.

11. Mengert (1920, 12) claims that Harmon wrote these clauses. See also Ohio House of Representatives *Journal* (1911, 797–800); *Toledo News-Bee*, 19 April 1911; *Ohio State Journal*, 20 and 28 April 1911; and *Cleveland Plain Dealer*, 28 April 1911.

12. *Cleveland Plain Dealer*, 28 April 1911. See also Ohio House of Representatives *Journal* (1911, 846–52); *Ohio State Journal*, 28 April 1911; and *Toledo News-Bee*, 28 April 1911.

13. Ohio Manufacturers' Association *Records*, Secretary's Report, November 1911.

14. Mengert (1920, 14).

15. For a detailed description of the adoption process in Illinois, see Castrovinci (1976).

16. In 1905 the Illinois railroad safety appliance law restricted the railroads' assumption of risk and contributory negligence defenses. More specifically, if a worker was injured because the employer did not comply with the safety law, and the employee knew of the violation, the employer could not invoke the assumption of risk defense. This law was only applicable to railroad workers (Clark 1908, 60).

17. The Chamber of Commerce committee was led by Edward Filene and other leaders from Boston and Maine Railroad, Simplex Electrical Co., Boston Consolidated Gas, and the Chase and Harriman Bank. Support was not uniform within the Chamber. Frederick Fish opposed workers' compensation and sought to delay the Chamber of Commerce's endorsement of any specific proposal (see Asher 1969).

18. The material on Massachusetts summarizes Asher's 1969 research.

19. For more detailed descriptions of the adoption process in Minnesota, see Kantor and Fishback (1998) and Asher (1971, 1973).

20. The stated goals of the MEA were threefold: to work for the prevention

of workplace accidents; to work toward the adoption of accident compensation legislation that would benefit both employer and employee; and to oppose class legislation. See MEA, 14 December 1908, and *Minneapolis Journal*, 18 December 1908.

21. Minnesota House of Representatives (1909, 13–14).

22. They also requested that the governor propose a bill to require all employers to submit accident statistics to the state Department of Labor so that the commission could have as much information as possible about the industrial accident situation in the state. For a first-hand account of the momentous meeting, see Minnesota House of Representatives (1909, 13–14). See also MnSFL (1909, 20–21); MEA, 11 January 1909; *Minneapolis Journal*, 25 and 28 January 1909; and the “Petition.” The signatories to the petition (p. 3), both employer and labor representatives, believed in the superiority of workers’ compensation: “shifting the financial risk as a certainty upon the employer, like other expenses of the business, and relieving him of the hazardous uncertainties and expenses incident to present methods of defense, would leave both parties and the State in reasonably satisfactory condition without imposing upon the employer that degree of taxation which would either tend to drive industries from, or keep them out of, this State as a result.”

23. Minnesota House of Representatives (1909, 20). Both Gillette and McEwen gushed about their pathbreaking agreement. Testifying before the Labor Committee of the Minnesota House of Representatives in February 1909, Gillette boasted that for “the first time in any state in the Union . . . representatives of employers and representatives of employes . . . have come together and in calm, fair, dispassionate discussion, have attempted to solve a problem which, to my mind, is the most pressing problem before the people of Minnesota.” McEwen was no less sanguine: “For the first time in human history . . . the representatives of the employing and the working classes met together in full, free and fair conference . . . and came to a harmonious and unanimous conclusion concerning what was the best thing to do toward removing prevailing hardships and existing evils” in the common law rules governing workplace accident compensation. Minnesota House of Representatives (1909, 29–30) and MnSFL (1909, 20).

24. Letters between the Labor and Industries Department and Minnesota employers show conclusively that the Department took its responsibility of investigating accidents in the state very seriously. A clipping department within the Department scoured the state’s newspapers looking for evidence of industrial accidents. If they found a mention of the accident, without receiving notification from the company, a letter of inquiry was generated. In some cases if a firm did not send any information about accidents, an incredulous letter was sent out. For example, on 29 September 1911 Labor Commissioner Houk sent a letter to the Parker and Topping Foundry asking “Can it be possible that no accidents have occurred in that length of time [year ending 31 July 1911] to the people in the employ of said company?” See Minnesota Department of Labor and Industries, Insurance Compensation Correspondence.

25. Although Gillette (1911c, 174, 180) worried about “the danger of injecting . . . a paternalistic and socialistic feature” into the workers’ compensation system, he believed that “laws properly framed and intending to do equal justice will probably do more good than breaking down of precedents will do harm.” As the president of the MEA, Gillette saw accident reduction as one of the motivating factors producing the mutual cooperation between employers and their workers. As the spokesman for labor interests, McEwen (1911, 168) stood on relatively conservative ground by today’s standards: “True progress will consist in the equilibrium

between obtaining the greatest benefits for the largest number of injured workmen and affecting the least injury to industry." "You must never kill the goose that lays the golden egg; don't do anything to injure capital," McEwen warned Minnesota's workers. See Minnesota House of Representatives (1909, 15) and MnSFL (1910, 22).

26. Speaking before the Minnesota Academy of Social Sciences in December 1910, Gillette (1911c, 175) indicated the fractionalization occurring within the commission and set the tone for the debate to occur in the 1911 legislature: "My own conclusion . . . is that it will be impossible to frame an act in a fair degree satisfactory to the employers and providing reasonably adequate compensation to injured employes or they dependents. . . ." See also *Minneapolis Journal*, 3 December 1910.

27. See Gillette (1911b) for his view of how the Gillette bill differed from that of his colleagues. See also *Minneapolis Journal*, 12 and 17 February 1911, and *Labor World*, 24 February 1911. F. G. Winston, the "head of one of the largest railroad and stripping [*sic*] contract concerns in the west," argued that a one hundred dollar medical allowance would "create a class of 'ambulance-chasing physicians' to take the place of lawyers." See *Minneapolis Journal*, 24 February 1911. See also *Minneapolis Journal*, 1 February 1911.

28. *Minneapolis Journal*, 2 April 1911.

29. MEA, 14 December 1911.

30. *Labor World*, 4 March 1911; MnSFL (1909, 21); and *Minneapolis Journal*, 5 February 1911.

31. *Labor World*, 25 March 1911.

32. *Labor World*, 8 February 1911, and *Minneapolis Journal*, 23 February 1911.

33. *Minneapolis Journal*, 24 February 1911.

34. MEA, 2 and 16 August 1912, and *Minneapolis Journal*, 14 October 1912.

35. *Minneapolis Journal*, 1 December 1912. Reports from William E. Stubbs, secretary of New Jersey's Employers' Liability Commission, heartened labor leaders. Stubbs concluded that his state's law was functioning relatively smoothly as 94 percent of the workers entitled to benefits were receiving them. See letter from Stubbs to Houk, 21 March 1912, in Minnesota Department of Labor and Industries, Insurance Compensation Correspondence.

36. *Minneapolis Journal*, 14 October 1912.

37. *Minneapolis Journal*, 3, 8, and 31 December 1912; *Labor World*, 28 December 1912 and 18 January 1913; *Minnesota Union Advocate*, 10 January 1913; and MnSFL (1913, 36, 67–68). See also MEA, 2 December 1912.

38. *Labor World*, 18 January 1913, and MnSFL (1913, 68).

39. *Labor World*, 19 April 1913; MnSFL (1913, 36–37); and Railroad Brotherhoods (1912–1913, 22). The *Minneapolis Journal*, 10 April 1913, made the same plea to its readers: ". . . pass the bill and get the system started. It can be perfected better after it is in operation than by laying aside the whole matter for another two years, while the extremists on both sides quarrel about terms."

40. MnSFL (1913, 19).

41. *Labor World*, 15 March 1915.

42. *Labor Review*, 11 and 18 April 1913.

43. *Labor Review*, 14 March 1913. For a summary of the internal fight within the labor movement, see Lawson (1955, 217).

44. MEA, 28 February 1913. See also *Labor World*, 1 March 1913.

45. MEA, 17 March 1913 and 7 April 1913.

46. MnSFL (1913, 19); *Minneapolis Journal*, 4 April 1913; and Minnesota Senate Journal (1913, 1156–61).

47. *Labor World*, 19 April 1913.
48. Biographical information on Lundeen is from Minnesota Secretary of State (1913, 664).
49. *Minneapolis Journal*, 12 April 1913.
50. Minnesota House of Representatives *Journal* (1913, 1624–31) and *Minneapolis Journal*, 12 April 1913.
51. Minnesota House of Representatives *Journal* (1913, 1630–31). The Senate did not agree to the House's amendments and a conference committee was organized. Of the two most important amendments that the House enacted, the House agreed to recede from the retroactive benefits for injuries lasting longer than thirty days and a revised medical benefits amendment was written. Instead of providing workers with a maximum of \$195 in medical benefits over an extended time period, the new amendment provided up to \$100 during the first ninety days of the injury, but the courts could order an additional \$100 of medical benefits. See Minnesota Senate *Journal* (1913, 1649–53).
52. *Labor Review*, 25 April 1913.
53. MnSFL (1913, 36; 1914, 27).
54. For more details on this process, see Kantor and Fishback (1998).
55. MnSFL (1913, 68).
56. For more details and statistical analysis of the adoption process in Missouri, see Kantor and Fishback (1994a).
57. Rube T. Wood of the MoSFL claimed that the monopolistic insurance and no maximum payment limit was insisted upon by the SLBTC (*St. Louis Post-Dispatch*, 29 April 1919). The SLBTC's opposition to private insurance is best summarized in statements made by Maurice Cassidy, the Secretary of the SLBTC: "Inexperienced persons who would be entitled to compensation will have to deal with trained insurance claim agents, whose reputations for dishonorable dealings are world-wide. After they brow-beat the claimants into accepting what they have to offer, these claim-adjusters, posing as the employers, will get the claimant to sign the settlement papers" (*Trades Council Union News*, 29 October 1920). For the MoSFL's views regarding how state insurance cut transactions costs, see MoSFL (1918).
58. *St. Louis Post-Dispatch*, 29 April 1919.
59. After the petition was filed, the Missouri Secretary of State, MoSFL president R. T. Wood, other labor leaders, insurance men, and corporation lawyers who favored the new law instituted court proceedings in the Jefferson City Circuit Court to have the referendum set aside. The lower court sustained their motion. However, the referendum supporters appealed to the state supreme court, which reversed the lower court and ordered the referendum to proceed (MBLS 1918–1920, 892).
60. The workers' compensation law was supported by the Republican candidate Hyde, who won the election (*St. Louis Post-Dispatch*, 31 October 1930). The Republicans also achieved the "impossible," their first majority in the Senate (*Kansas City Star*, 4 November 1920).
61. *Kansas City Star*, 6 November 1922; *St. Louis Post-Dispatch*, 25 March 1921.
62. *St. Louis Post-Dispatch* 6 November 1922, and *Trades Council Union News*, 13 October 1922.
63. Associated Industries of Missouri, Bulletin Nos. 150, 169, 185.
64. Kansas had a weekly maximum of fifteen dollars, while Illinois' weekly maximum was fourteen dollars (U.S. Bureau of Labor Statistics, 1926b, 23, 26). Clark's view on the issue is supported by statistical analysis of the referendum voting. See Kantor and Fishback (1994a, 276–87).

65. Associated Industries of Missouri, Bulletin Nos. 191 and 197.

66. Associated Industries of Missouri, Bulletin No. 177.

67. See Clark (1925, 602); *St. Louis Post-Dispatch*, 29 October 1924; and *Kansas City Star*, 2 November 1924.

68. Views on the probability of ever passing a workers' compensation law varied widely at the beginning of 1925. A state labor official saw no reason why a workable workers' compensation law could not be enacted. On the other hand, the *Monthly Labor Review* received reports that the difference of opinion over the nature of the bill was so great that it would be difficult to agree upon a measure to get sufficient support for passage (Clark 1925, 602).