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In reaction to a nationwide coal strike in 1919, Kansas Governor Henry J. Allen called a special session of the state legislature in January 1920 to pass the Kansas Court of Industrial Relations Act. This act created a tribunal to oversee labor relations within industries designated as essential to the public good, such as food, fuel, public utilities, clothing, and transportation. The act also prohibited strikes and lockouts within essential industries. In spite of opposition by the labor movement, the act passed with the overwhelming support of industry and the public.

The Industrial Court operated for four years, but its first two years were the most significant. In 1920, the Court adjudicated twenty-eight cases between labor and industry. Most of those cases were brought by labor groups seeking increased wages, shorter working hours, or changes in conditions. During the 1921 legislative session, the Court was reorganized and two new judges were appointed. These new judges interpreted the Industrial Court Act differently, and limited the Court's actions to labor disputes where there was a direct threat to the public good.

However, increasing opposition to the Court resulted in its downfall. Many in the labor movement and in industry saw any government control as unacceptable, and challenged the Court through strikes and legal action. Because of the Industrial Courts in ability to control labor and industry, the public began to see the Court as ineffective. In

1922, Jonathan Davis, an opponent of the Court, was elected governor, but he was unable to abolish the Court. However, in 1923, the US Supreme Court ruled several key points of the Industrial Court unconstitutional. This effectively ended the Court's operation, though it lingered until its repeal in1925.

Industrial Conflict and the Public Good: The Creation, Operation, and Decline of the Kansas Court of Industrial Relations, 1920-1925

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James R. Riordan

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Introduction

In the depression following World War I, America was swept up in some of the worst labor strife this country has known. With the signing of the armistice, the high prices and high salaries achieved during the war quickly dried up. Added to this problem was the public's ever increasing fear of radicals, both foreign and domestic. Strikes broke out all over the nation, and newspapers were filled with stories of subversion, un-Americanism, and impending revolution. Kansas was no exception: in the winter of 1919 a nationwide coal strike created a fuel shortage throughout the state. Although the strike lasted only a month and a half, it left fears of future industrial conflicts that threatened the public good. As a result, the governor of Kansas, Henry J. Allen, proposed the creation of an industrial court for his state. It would be the responsibility of this court to oversee labor relations in those industries deemed crucial to the public welfare, such as food production, clothing production, transportation, and fuel. To this end, the court was invested with the power to dictate wages, set production levels, and prohibit strikes and lockouts. The Kansas Court of Industrial Relations, although it lasted only five years, made sweeping changes in labor relations within Kansas, and even influenced labor relations on the national level.

The Court was a product of postwar social turmoil, but its formation also signaled the end of the progressive reform movement. The end of the war had brought nationwide demobilization and the discontinuation of government programs like the War Labor Board and railroad regulation, federal programs that had been seen by progressives as a potential means of social reform. The Industrial Court is an example of progressive

attempts to fill the vacuum left by the discontinued Federal programs. Even with the new program, however, it became apparent as the decade of the 1920s continued that the progressive movement was in decline. This decline can be illustrated through the rise and fall of the Kansas Court of Industrial Relations.

This study of the Industrial Court, and the socio-political trends that affected it, revolves around four basic themes. The first is an examination of the issues and events that led to the creation of an industrial court in Kansas. This examination includes both long term and short term causes as well as national and local trends that affected the creation of the Court. The second theme is the effect of the Industrial Court on capital, labor, and the general public. Responses to the Industrial Court among different groups were not static, and as the Court progressed, peoples' views of its effectiveness changed both nationally and locally. The third theme is an examination of the Court's day-to-day operations, which allow us to how the particular views of both the judges and the plaintiffs affected labor relations in Kansas during the first half of the 1920s. The final theme of this work consists of issues and events that ultimately led to the downfall of the Industrial Court. From the Court's inception it was viewed by many as the final answer to years of conflict between industry and labor, yet the Court itself only lasted five years. What happened in those five years that caused the downfall of such a highly lauded social reform is the subject of this study.

Chapter 1

Allen and his Pet Law

In January of 1920, in the wake of social unrest, the state of Kansas passed a law creating an Industrial Court. This Court was vested with the power to arbitrate labor disputes, set wages, oversee working conditions, and prohibit strikes within industries that were deemed essential to the public good. The Court became an instant sensation; it was condemned by labor as enslavement, praised by the public as the solution to social turmoil, and hailed by business as a tool to break the labor movement. The most significant proponent of the Industrial Court was Henry J. Allen, governor of Kansas from 1920 to 1923. The culmination of Allen's political career was closely tied to the creation and demise of the Industrial Court. The president of the American Federation of Labor, Samuel Gompers, even went so far as to describe the Court of Industrial Relations Act as Governor Allen's "pet law."[1] It can be safely said that it was Allen's avid progressivism that proved to be the support necessary for the creation of the Industrial Court. Therefore to understand the Kansas Court of Industrial Relations, one must first understand Henry Justin Allen.

Henry J. Allen, who started out as a newspaperman, was the classic Progressive Republican. Throughout his life, Allen supported reform both in his political and journalistic careers. His political career reached its climax at a time when turmoil was spreading across both the United States and Kansas in the form of labor and social unrest. Faced with these harsh realities, Allen never abandoned his reform-minded attitude, and even instituted reforms in an attempt to alleviate many of the problems. During two

terms as governor of Kansas, Allen confronted the problems of post World War I America while at the same time trying to maintain his Progressive ideals.

The details of Henry Allen's life before his governorship tend to be sparse, and in some cases the story is convoluted. There are only a few brief biographical accounts of Allen's childhood. Most of these were written prior to 1975, and rely heavily on excerpts from newspaper accounts of Allen's life. All accounts do agree that Allen was born in Warren County, Pennsylvania, September 11, 1868, and that he was the son of John and Rebecca Allen. From his earliest days, Henry Allen probably grew up in the shadow of the Republican party. His father had served in the Union Army during the Civil War, and, if not a Republican himself, was a supporter of Lincoln. In 1870, Allen's parents took him and his sister, Elizabeth, and migrated across the country to Kansas, where John Allen took a claim in Clay County. In 1873, due to the poor economy, John Allen sold tracts of his claim. The economic hardships of the family culminated with the foreclosing of a mortgage John Allen had taken out to buy a threshing machine. According to Allen, these adversities convinced him to leave agriculture, and served to propel him into the Progressive movement.[2]

Allen's educational career is even more clouded than his early childhood. All of the biographical sketches claim that Allen graduated from Burlingame High School, and some claim that he also attended Washburn College for a number of years.[3] The sketches all state that Allen went to Baker University in Baldwin, Kansas. One biographical sketch claims he attended Baker in 1890 after working as a barber in North Topeka. The Washburn College Catalogue does show Henry Allen attending from 1887 to 1889 and

says that he lived in North Topeka.[4] However, he was taking high school courses provided by Washburn, not college courses, and the Catalogue shows he left before completing the program. The dates of Allen's career at Washburn conflict with his attendance at Baker. If Allen did not complete high school before 1889 he could not have attended Baker in 1890, but it is almost certain that he attended the University at some point. It was at Baker that Allen met his future wife, Elsie Nuzman.[5] One contemporary biographical sketch of Allen claims that while attending Baker he served as an editor of the University newspaper. According to the article, Allen's work for the paper greatly annoyed the University's faculty.[6] This article is more than likely in error because there is no indication that Allen ever served on the staff of the *Baker Beacon* at any of the times he could have attended the University. Besides, Allen got his first job as a reporter for the *Salina Daily Republican*, because of a written recommendation from William A. Quayle, the University's president, to the owner of the paper, Joseph L. Bristow, an alumnus of the University.[7] If Allen had indeed antagonized the faculty, it is doubtful the president would have gone out of his way to help him with a job reference. Also, the contemporary article claims that Allen graduated from Baker, whereas, other articles claim, he dropped out in favor of professional journalism.

What little is known of Henry Allen's early journalistic endeavors seem to indicate he was a relentless if not a somewhat unethical newspaper reporter. Bristow hired Allen because of his speaking and writing abilities, but Bristow also got a man of great ambition. On one occasion, in an effort to increase the readership, Allen wrote that an airplane would fly over the city . When this failed to happen, mainly because a

workable airplane would not exist for another ten years, it aroused the anger of the citizens of Salina. In another instance, Allen attempted to report on the meetings of the Farmers Alliance, which met in the Salina Opera House. He was informed that the meetings were not open to the public, and was turned away at the door. However, the next day a story appeared in *The Salina Daily-Republican,* which described, in great detail, the events of the meeting. The story infuriated the members of the Alliance, and during their next meeting, they made a careful search of the opera house. They discovered Allen hiding in a ventilation shaft high above the floor. The Alliance demanded that the county attorney prosecute him, but since no laws were broken nothing came of it.[8]

In 1894 Allen went from newspaper reporter to newspaper editor with his purchase of the *Manhattan Nationalist.* Although Allen only stayed with the *Nationalist* for 18 months, it is significant because it was his first experience as owner/editor. His work on the paper also reflects his own personal views on the state of Kansas politics at the turn of the century. Upon assuming control of the *Nationalist*, Allen published an introductory editorial, in which he stated, ". . . no newspaper, that has deserved to succeed, has ever failed in any intelligent community in Kansas . . . "[9] In spite of this apparently neutral statement it was clear that the newspaper would be a mouthpiece for the Republican Party in Riley County. The previous editor, R. D. Parker, alluded to the paper's continued Republican stance in his farewell address by saying, " it is with satisfaction that the republican standard has never been lowered and the country has been largely redeemed from the folly of populism."[10] The folly of which Parker spoke was the shift of Populism from a broad-based reform movement to one focusing on the issue of

the free coinage of silver. This disdain for Populism can also be seen in Allen's writing. Although an avid reformer, Allen's views of Populism seem to parallel those of his friend William Allen White, who felt reform depended on the respectability and civic mindedness the Populists seemed to lack.[11] Allen chastised the populists both for their support of the Free Silver movement and for their failed reforms. Allen condemned the idea of free silver by indicting debt-ridden France and its use of silver currency. He also pointed to the softening of populist ideals, "The populist leaders, most of whom now have official jobs, are not talking as much about the government being on the verge of ruin as they used to . . ."[12]

On April 2, 1896 Allen sold the *Manhattan Nationalist,* to become partners with his former employer, Joseph Bristow, who now owned the *Ottawa Herald* as well as the *Salina Daily Republican.* Allen's main task in that partnership was the running of the *Ottawa Herald*, and in 1905, when the partnership was dissolved, he retained the *Herald.*[13] As editor of the *Herald* Allen concentrated more on local interest. One of his favorite crusades involved a proposed electric railway line from Kansas City to Ottawa.[14] However, Allen still managed to get in a few jabs at his political opponents. In one article he admonished the Populists in Franklin county for having a joint political convention with local Democrats, and showing ". . . no pretense of a difference of political opinion . . . "[15] As editor of the *Herald,* Allen also moved to widen his horizons in the newspaper industry. Sometime after 1905, Allen acquired shares in newspapers in Parsons, Fort Scott, and Garden City.

In 1907, Allen sold the *Herald* and all of his other newspaper interests to buy the *Wichita Beacon*. Allen owned the *Beacon* for two decades, and only sold it out of fear of his own declining health. Allen's ownership of the *Beacon* was a new experience for him. All the newspapers Allen owned previously had been supporters of the Republican party, with Allen simply taking up where the former owners had left off. The *Beacon,* however, was a Democratic newspaper prior to Allen's ownership. In his introductory editorial, Allen was very careful to keep a neutral tone, stating that, "the Beacon has no political designs, has no political friends or political foes."[16] In spite of this pledge the *Beacon* gradually shifted to a pro-Republican stance, and by 1918, regularly featured the "Republican Column" written by various members of the Republican County Central Committee.[17] As Editor of the *Beacon,* Allen fought for prohibition of alcohol and attacked local corruption. He also constructed the Beacon Building, the first ten-story building in Kansas.[18]

While running his various newspapers, Allen became steadily more involved in politics. His first experience in politics came in 1898, when he became the personal secretary to newly elected Governor William E. Stanley, a Wichita resident. Allen's next major political experience would come over a decade later. In 1910, the Republican Party was on the verge of a dramatic split. President William Howard Taft, the hand-picked successor of Theodore Roosevelt, did not possess the reform-minded nature of his predecessor. Taft saw himself simply as an administrator, which angered many of the progressives in the Republican Party who advocated more reforms. Theodore Roosevelt finally came out against Taft and the conservatives in supporting the progressive wing of

Henry J. Allen, Progressive Republican governor of Kansas from 1919-1923, was widely credited with the creation of the Industrial Court (Courtesy of the KSHS).

the Republican Party.[19] Allen, in his newspaper publication, had shown himself to be a loyal Republican. However, Allen was also an avid progressive, and found the inaction of the party leadership distasteful. Often Allen's editorials criticized Taft and his supporters for the ". . . reckless disregard of all principles of justice which has characterized their settlement of contests . . ."[20]

The growing split between Progressives and Conservatives came to a head at the Republican National Convention at Chicago in June 1912. Allen went to Chicago both as a correspondent for the *Beacon* and as the leader of the Kansas delegation that backed Roosevelt.[21] One observer described the Chicago Convention:

> Sweltering as was the weather, the streets were gay with the unceasing nondescript processions of humanity . . . Every lobby along the lake front boiled and bubbled with gossip and the whispering of intrigue . . . In walking twenty yards you could hear as many charges and countercharges of betrayal.[22]

The Roosevelt supporters were in trouble from the beginning. Taft controlled the National committee and the Credential committee, and could unseat Roosevelt's delegates at will. In spite of this potential threat, Allen's reports remained positive. The headlines on Allen's articles proclaimed, "Taft Does Not Expect Nomination" and "Roosevelt Is In fight To The End."[23] In the end however, the Roosevelt delegation was defeated. In reaction to this, Roosevelt and his Progressive followers marched out of the convention hall in protest. However Allen was not with them; in his out-spoken manner Allen had remained behind to castigate the Taft supporters: "you, not we, are making the record, and we refuse to be bound by it."[24] With Roosevelt's walkout the split between

the Progressives and Republicans became official. At their National Convention in August, the new Progressive party nominated Roosevelt as their presidential candidate.[25]

On the state level Progressives were also at work. William Allen White, editor of the *Emporia Gazette,* a close friend of Henry Allen and a longtime friend of Roosevelt, was the national committeeman of the Progressive Party for Kansas. White's job was to see to it that Bull Moosers, as the Progressives called themselves, ran in every election from the district to the state level in the interim election of 1914. White asked Allen to run for governor on the Progressive ticket. Allen consented on the condition that someone else would tell his wife he was doing it.[26] Like most Progressives in 1914, Allen lost the election. Two years later, in 1916, the Democratic presidential candidate, Woodrow Wilson, utilized the split in the Republican Party to gain the presidency.[27] That same year, Allen and the other Progressives returned to the Republican Party.[28] There is no evidence of any kind of retribution towards Allen after his return to the Republicans, but Allen would remain conscious of what his split with the party did to his reputation three years later during his governorship.

Allen's nomination and run for Governor of Kansas as a Republican in 1918, was unconventional at best. When America entered World War I in 1917, Henry Allen joined William Allen White as a colonel in the Red Cross and went on an inspection tour of Red Cross facilities in Europe. In his autobiography, White freely admitted that the main reason he and Allen went to Europe was for material to write about. White summed up the trip as ". . . two fat middle-aged men who went to war without their wives."[29] Upon returning to the United States in November 1917, Allen discovered he had won the

Republican nomination for governor of Kansas. Allen's nomination represented a compromise; Progressives and Conservative Republicans alike realized what their split in 1912 had cost them. In the 1918 political campaign they were determined to stay united regardless of their differences.[30]

Allen was as uninvolved with his campaign for governor as he had been with his nomination. Remaining only briefly in the United States, Allen returned to Europe to work for the Red Cross and later for the Y. M. C. A., where he would stay throughout his campaign. Allen's personal political campaign was virtually nonexistent. His own newspaper, the *Wichita Beacon,* almost never mentioned him in conjunction with his run for governor, let alone promoted him for the position. In fact, there was only one article that spoke of Allen in conjunction with his campaign, and that article merely lamented the fact that Allen would not come home to participate in his own campaign.[31] The *Beacon* and Allen, perhaps conscious of the damage the Progressive/Conservative split had caused, tended to focus on the promotion of the Republican ticket in general. The *Beacon* played up the fact that "five Republican congressmen have already resigned their seats in congress, every one to enter active military service . . ."[32] The *Beacon* even told its patrons:

> It will be an easy matter for Republicans to vote this year. Simply make a cross in the square opposite the word Republican, fold your ballot and give it to the judge. Never mind about the names - they are all good men."[33]

William Allen White did make a small effort to promote Henry Allen in his own paper, the *Emporia Gazette,* but this was the only major newspaper in Kansas to do so.

The *Gazette* played up the fact that Allen was serving his country rather than campaigning, "remember to vote for Henry Allen, he didn't forget to go to France for you . . ."[34] Meanwhile, on the western front, Allen had run into problems. In his usual outspoken way, Allen had condemned the military's disinterest in troop morale and their indifference to informing families of relatives lost in combat. This attack on military policy gave the Wilsonian faction, who were very conscious of the united Republican front they faced in the upcoming election, all the excuse they needed to have Allen discharged from the Red Cross. The main excuse the Wilsonians gave was that Allen's criticisms were simply an effort by Allen to promote himself. However, William Allen White once again came to the aid of his friend, and got Allen a transfer to the Y. M. C. A.[35]

In spite of Allen's apparent disinterest in his own political campaign, he, as well as the rest of the Republican Party, won an astounding victory. The day after the election the Associated Press proclaimed that "Kansas got back into the Republican fold . . . with the most sweeping victory the party has staged in this state in 20 years . . ." The *Beacon's* headline proclaimed "Mr Allen's Majority Is 150,000."[36] That majority was the largest received by any Kansas political candidate up to that point. In spite of this, Allen was not present to thank the voters.[37] Allen, who was still in France, first heard of his election when he read about it, almost a week later, in a Paris newspaper.[38]

On January 13, 1919 Henry J. Allen became the Twenty-first governor of Kansas, taking the place of Arthur Capper, who had won a seat in the United States Senate. That same day *The Topeka Daily Capital* proclaimed "Rip Van Henry comes back to

Kansas . . ." At noon the oath of office was administered to Allen as well as to the new Lieutenant Governor, the new Justices of the Kansas Supreme Court, the State Auditor and Treasurer, and the new Attorney General.[39] Allen's inaugural address began by extolling the progressive virtues of Kansas: "Kansas has solved many of its moral problems . . ." which included the battle for prohibition and universal women's suffrage. He called on the state legislature to ratify the constitutional amendments that would make both of these issues national law. The only great fear that Allen expressed in his inaugural address was the alarming growth of tenant farming.

> We are first of all an agricultural state, and for many years it was our boast that we were a state of home owners; but now we confront the fact that substantially half the farm lands of this state are owned for speculative purposes and tilled by men who do not own the soil.

Allen also tried to allay fears of labor surpluses due to returning soldiers. The final, and what would be the most significant, part of Allen's speech, was a call for state colleges to take ". . . every opportunity to mingle in our educational system a course of training to equip all physically and mentally . . . to defend the national life . . ."[40] This sounded to many like compulsory military training.

Allen's first months as governor proved to be relatively quiet. The overall reaction to his inaugural address was positive. However, there was some backlash against the military training program. Churches were the first to react. The Church of the Brethren of Overbrook Kansas sent a letter to governor-elect Allen, before he had even officially given his inaugural speech, voicing their opposition to what they perceived as compulsory

military training.[41] Other organizations followed quickly. The fraternal farmers organization known as the Grange wrote to Allen stating that they were ". . . positively and emphatically opposed to compulsory military training . . . ," and compared it to the actions of Germany during the war.[42] Allen's reaction to these criticisms took two forms. In some cases he simply blamed the press for misinterpreting what he had said. However, in most cases he tried to justify his stance. In a letter to one critic Allen stated that "the League of Nations . . . may prevent future wars for a time but it is in no sense a guarantee of lasting peace . . ."[43]

Other problems soon came to the forefront in Allen's governorship. The general fear and hatred of radicals, pacifists, and foreigners that was sweeping post-war America also had its effect in Kansas. Draft boards across the state began requesting support from Allen in a program to deport all aliens who had been exempted from the war on the basis of their non-citizenship. One letter claimed that "for every alien so exempted a good American boy had to go to the front . . ."[44] There was also sustained hatred against conscientious objectors. The Adjutant General of Kansas called on Clyde Reed, Allen's secretary, to see to it that a case was brought against the Mennonites, who were well-known pacifists during the war.[45] The creation of the Union of Soviet Socialist Republics in Russia also sparked an increased fear of radical organizations. P. C. Zimmerman, the secretary of the Anti-Bolshevik Campaign in Kansas complained to Allen that ". . . enemy agents . . . are going 'wide open' apparently without any fear of being molested . . ."[46] Allen, who seemed to follow the political maxim "fight the battles you can win," for the most part tried to navigate a middle course through the hysteria. When the Anti-Bolshevik Campaign complained bitterly to Allen that they were running out of

money, Allen's only reply was "I regret that the financial outlook for the Anti-Bolshevik Campaign is so poor," but offered no other assistance.[47] However, when a professor from Tabor College in Hillsboro wrote to Allen condemning the offenses committed against the Mennonites, Allen replied that he was sympathetic to the problems of the Mennonites, but "the attitude of the public which has been engaged in the war toward the conscientious objector is a perfectly natural attitude . . ."[48] In another instance Isaac Siegel, a state legislator, requested support from Allen for a law that would force immigrants within the state to be naturalized. Allen simply avoided the issue by saying "the number of aliens not naturalized in Kansas is not sufficient to warrant the measure being suggested . . ."[49] The immigrants themselves did not remain quiet during these hostilities. A group of Russian and Slavic residents of Kansas complained to Allen of the treatment they had received at the hands of local government:

> Nearly all of us are the holders of liberty bonds and are favorably disposed toward the government and are unable to understand why we should be singled out for irritating restrictions which we feel are wholly undeserved. All of us came to America before this unfortunate war was started and ought not to be held responsible for what our people have done in Russia[50]

In reply Allen simply told the immigrants that he had no right to interfere with what the local governing bodies of Kansas did.[51]

Allen was ultimately more interested in reconstituting the old Progressive program of reform than in fighting his state's intolerance. Allen saw his election as a chance to reestablish the Progressive wing of the Republican Party. "It is time that the Progressives made another appearance on earth . . . the standpat element [conservatives] of the party is getting back to . . . its old habits . . ."[52] Many others were inclined to agree with Allen. Gifford Pinchot, a strong supporter of Roosevelt in his Progressive

presidential campaign, told Allen that there needed to be a ". . . concerted action . . . [to] minimize or destroy the control of the Old Guard . . ."[53] Some of Allen's progressive programs included: a program to distribute educational material to returning soldiers, the establishment of various councils to look after the welfare of soldiers, and a program to buy land to sell to tenant farmers.[54] Even though Allen was a supporter of Progressive Republicans, he remained an astute politician. While promoting progressivism, he was careful to stay in the background:

> My name was among those who stood for "fire brands" in 1912, and I think it would be unfortunate to create the impression that we are going to get up another split in the party or seek to revive a leadership which stood for slamming the door . . . I have also been getting a few brick bats . . . from people who seek to create the impression that I am . . . taking advantage of the position which the Republicans have just given me to create another split . . .[55]

Not all of the reform minded ideas Allen developed or supported worked out well. In March of 1919 Allen was invited to a meeting of the National Cotton Growers Association, which was trying to increase the price of cotton. Allen sent a scathing letter saying, "I am unable to agree to assist any body of men to trade upon the misery of the world for their own enrichment . . ."[56] Allen's position on the Cotton Growers Association soon reached the newspapers, and there was a backlash that spread across the South. One Texan accused Allen of ". . . amazing ignorance or gross mendacity." The letter went on to state that the wheat farmers of Kansas could afford to be magnanimous and patriotic because the price of wheat had been fixed by the government during the war.[57] This incident also reveals Allen's often detrimental and outspoken nature.

Allen also was a great supporter of the Prohibition Amendment. Following the ratification of the amendment, other states began to write to Allen for advice on the implementation of Prohibition, since Kansas had been a dry state for years. Allen informed the *New York Tribune* that it had taken Kansas several years ". . . of developing community sentiment to [a] point that would sustain law-enforcement" of the bill.[58] In spite of this confidence in the temperance of Kansas, Allen still received countless letters reporting the illicit use of alcohol within the state's borders even after thirty-five years of prohibition.[59]

Hand in hand with Allen's support for Prohibition went Allen's support for women's suffrage. In mid 1919, the 19th amendment giving women the right to vote went to the states for ratification. In early June, Allen put out feelers to determine the Kansas legislature's interest in the calling of a special session specifically for the ratification of the 19th amendment.[60] Reaction was mixed. Most legislatures supported the idea of women's suffrage, but felt the timing of the special session would be very inconvenient. As one state representative put it, "personally I would prefer not to have a special session at this time as it is a very busy time on the farm just now . . ."[61] One representative pointed out that "while . . . a special session is desired, it might be advisable to have same next January at which time such other matters that would come up could be disposed of . . ."[62] This statement would later prove prophetic. In spite of initial reservations, Allen called the special session to meet ". . . in Topeka, at the hour of Noon, on the 16th day of June 1919 . . ." to debate the issue of suffrage.[63] The legislators opted to assume the cost

of the special session themselves.[64] On June 16th the Kansas legislature ratified the 19th amendment in a session that lasted about five hours.[65]

Allen did not have time to dwell on the success of the amendment. By late June Kansas farmers were on the verge of a major crisis. The harvest of wheat in the early twentieth century was a labor-intensive process, which required workers to cut, shock, and thresh the grain. In the mid-summer months of 1919 farmers across the mid west were hit with chronic labor shortages. Allen began receiving telegrams on the critical need for laborers from across the state. Telegrams were a sure sign of trouble, since they cost more to send then a letter and were only used in desperate situations. One man sent a telegram to Allen saying "the harvest labor situation here is critical we need a thousand men in Pratt County . . . "[66]

The issue of the labor shortage turned out to be more complex than a simple lack of people to work. In fact, there were hundreds of people clamoring for work. Allen had received thousands of letters requesting that soldiers be demobilized, so that they could go to work in the harvest. One man pleaded with Allen:

> Surely, young men who answered their country's call should be given some consideration in the matter of discharges but I have appealed in vain. I was willing to give my boy to his country in its need and never raised an objection . . .[67]

Allen did his best to get soldiers out of the army and into the wheat fields. Allen wrote to the Demobilization Bureau saying, "Kansas needs thousands of men in the harvest fields at once to help take care of the largest amount of bread grain ever grown in any state."[68] One problem with the labor shortage was the need to move the laborers from cities to the

country. Many of the telegrams Allen received inquired about getting special rates for laborers to take the railroad from urban areas to work on farms. Allen was in turn informed by the railroads that they would ". . . gladly cooperate . . . to facilitate prompt movement to unemployed men . . . to Kansas wheat fields . . . ," but those men would have to pay the full fare.[69] In one instance a desperate county agent tried advancing the train fares to workers in cities, but after doing so ". . . lost fifty percent of the men even when accompanied by guards . . ."[70] In the end, most local communities had to solve their own labor troubles. Lyon County made arrangements with the local National Guard to help harvest the wheat.[71] The next month the Emporia City Commissioners passed a resolution sending city maintenance crews to work in the fields after their own work shift.[72]

The one reoccurring theme in Henry J. Allen's life was his belief in progressivism. Spawned by the hardships of his early life, Allen's belief in progressivism was the only ideal that ever caused him to break with the Republican party. However, Allen was also an astute politician, and in his first months as governor was careful not to raises fears that he was going to lead another progressive break from the Republicans. Allen also demonstrated his keen political instincts by not getting too deeply involved in the hysteria gripping the nation over the issues of immigration and radicalism. This combination of progressive idealism and political pragmatism was to be a defining characteristic of his dealings with the labor turmoil that would overshadow the rest of his governorship.

Chapter 2

No Coal For Kansas

Although Henry Allen would prove to be one of the major proponents of the Kansas Industrial Court, it was post World War I labor unrest that served as the catalyst for the Court. Throughout 1919, a wave of strikes swept though the nation. These strikes engendered the public's fear of subversive radicals, and a concurrent fear that the nation would be caught up in industrial conflicts with no recourse. These fears were especially strong in Kansas because of a strike, led by the United Mine Workers of America, in the bituminous coal fields, which helped cause a fuel shortage that year. It would be this coal strike which would create an environment ideal for the creation of the Industrial Court.

World War I was a mixed blessing to the United Mine Workers of America (UMW), the largest miners' union in the United States. In one sense, World War I gave the UMW leverage to extract wage increases and to expand their territory. When America entered the war, the government's concern for uninterrupted coal production became paramount. To this end, the government established the Fuel Administration to oversee mining operations. This organization, in an effort to maintain good relations between miners and mine operators, allowed the UMW to organize miners and to engage in collective bargaining without interference. With this new freedom, the UMW began to expand into areas that had previously been stanchly anti-union, such as West Virginia, Alabama, and Kentucky.[1] War also brought a shortage of mine labor. Miners, as it turned out, were very patriotic, and enlisted in large numbers, until the government began prohibiting their enlistment. Many miners also moved to jobs in the more lucrative

munitions industry. As a result of these shortages, the UMW was able to secure several wage increases throughout the war.[2]

However, this new leverage came at a price. The most notable restriction imposed on the bituminous miners was the so-called "penalty clause." In September of 1917 the UMW and the mine operators of the Central Competitive Field (Illinois, Ohio, Pennsylvania, and West Virginia), which set the standard for all other mining regions in the United States, agreed to a contract brokered by the Fuel Administration. Under this contract, commonly called the Washington Agreement, the miners received a substantial wage increase of 45 cents per ton mined. In exchange for this increase, the UMW accepted a penalty clause, which stipulated that workers conducting unauthorized strikes would have one dollar deducted from their wages for everyday they struck. This agreement was to be in effect until the end of the war or April of 1920, and essentially froze wages for the duration of the war. Although the international officers of the union were able to get the agreement passed, district leaders, such as Alexander Howat, who lead UMW District 14 in southeastern Kansas, publicly criticized the leadership for supporting the penalty restriction. The main criticism of the penalty restriction was that operators did not have to abide by any similar restriction.[3] Also, since the penalty clause did not apply to strikes called by the international leadership, it severely limited the power of the district leaders. Other problems also plagued the union. The wages that the UMW were able to obtain turned out not to be as beneficial as they originally thought. The wage increase, which by pre-war standards were very good, was offset by inflation brought on by the war.[4] Added to this problem, public opinion began to turn against the

labor movement in general. Many people felt that the labor movement was taking undue advantage of the war to advance its own ends.[5]

The situation finally came to a head in the fall of 1919. In September, acting president of the United Mine Workers of America, John L. Lewis, laid the terms of a new contract for bituminous coal miners before the representatives of the Fuel Administration and the mine operators. The first term of the new contract called for an end to the penalty clause on the basis that, although there was no official peace treaty ending the war, the fighting had stopped as a result of the armistice. The other terms consisted of a wage increase, a six-hour shift, a five-day work week, and nationalization of the mining industry.[6] If no agreement could be reached by November 1, the UMW would strike.[7]

There was little interest on the part of government or the coal industry to compromise with the UMW. Even if the war was not over, the war time demand for coal was. Through late September and early October, all the parties involved made demands and counter demands, to no avail. Finally, on October 17, the UMW issued a statement declaring that the negotiations had been broken off without reaching an agreement.[8] On November 1, 1919, the UMW went on strike.

Government action against the strike was almost immediate. On November 1, the same day as the strike was called, Attorney General A. Mitchell Palmer obtained an injunction against the strike. The basis for the injunction was that, because there was no official peace treaty, the strikers were in violation of the wartime Lever Act. The Lever Act had made it illegal to hamper the production of necessary products during time of war.[9] The officers of the UMW tried to challenge the injunction in court, but it was

upheld. The union had until 6:00 P.M. on November 11 to rescind their strike order. The leaders of the UMW, including the international officers and the district presidents, held a conference at Indianapolis on November 10 and 11 to determine their next course of action. The meeting lasted over seventeen hours, and at 4:10 A. M. John L. Lewis issued the statement: "we will comply with the mandate of the court . . . we cannot fight our government."[10]

If the strike had ended then, the Kansas Court of Industrial Relations would probably never have been created; however, the strike did not end. Although the strike had been called off by the international officials of the UMW, individual UMW districts throughout the country refused to comply. This refusal on the part of the miners to obey their leadership was due partially to their own militancy, but it was also due to the fact that the order to end the strike was not signed by any of the national officials, nor did it have the UMW seal.[11]

One of these rebel districts that refused to end the strike was District 14 in Kansas. Within Kansas, District 14 encompassed Cherokee and Crawford counties of in the southeast corner of the state. The district had over 300 shaft mines and strip mines, which employed on average 11,749 miners. From year to year, these mines produced approximately 4,752,995 tons of bituminous coal.[12]

District 14 itself was led by Alexander Howat. Although Howat was criticized throughout his mining career for his ruthless and dictatorial nature, there was no one who could deny his absolute devotion to the cause of labor. Alexander Howat had been born in Glasgow, Scotland in the 1870s, and immigrated to the United States with his parents

at the age of three. Although his career as a miner started at the age of ten, he spent much of his early adulthood traveling throughout the nation and abroad. It was not until 1899 that he joined the United Mine Workers of America in Kansas. Almost immediately Howat began to take on leadership roles in his local union and then in the district leadership. In 1905 he was elected president of UMW district 14, a position he held until 1921, with the exception of a two year hiatus between 1912-1914. Although a tireless and skilled organizer, Howat had a hot temper. Howat demonstrated this temper in 1912 when he was accused of accepting bribes from local mine owners. The charges were never proven, and the individual making the accusations was forced to leave the state after Howat successfully sued him for slander and libel. Howat was also very independent of the international leadership. He often showed this autonomy by calling wildcat strikes, local strikes that were not authorized by the higher union leadership. This cavalier attitude toward the leadership would often bring him into conflict with both John L. Lewis and the Kansas government.[13]

Howat had always been opposed to the penalty clause and the restrictions of wartime labor policy, so when the order came to end the strike, he and his district went their own way. When Lewis gave the order to end the strike, Howat, who had been at the Indianapolis meeting of the UMW leadership, simply did not telegraph the order back to his district. However, before leaving for the meeting, Howat supposedly had given orders to his vice president, August Dorchy, that even if the national strike was canceled District 14's strike would continue.[14] On November 12, steam whistles blew at mines all over the district to call the men to work, but there was no response.[15] Similar scenarios repeated

Alexander Howat, president of District 14 of the United Mine Workers of America, led Kansas miners in the 1919 Strike and was a strong opponent of the Industrial Court (Courtesy of the KSHS)

themselves in Illinois, Kentucky, Virginia, Missouri, and Oklahoma. In effect, the UMW leadership had met the requirements of the injunction and were free from prosecution, but their miners were now embroiled in a nationwide wildcat strike.[16]

The strike created a critical situation for Allen on several levels. First, the fact that the strikers were seen by the public as radicals because of their apparent unwillingness to cooperate with the mine operators represented a direct threat to Allen's progressive ideals. As one Allen supporter had put it six months earlier, "the attitude of the entire reactionary element, press and public, . . . is a direct challenge to progressives in all parties . . ."[17] This attitude was reinforced by the mainstream press of the time period. Every day, hundreds of articles were printed in newspapers across the country telling of the supposed work of foreign radicals trying to undermine the United States. The University of Kansas newspaper, the *University Daily Kansan,* proclaimed ". . . radical agitators are working to gain control of thousands of men on strike in America today . . ."[18] With the outbreak of strikes within the Boston Police Force in September 1919, followed by a major nationwide steel strike, and a general strike in Seattle, it was plain to many at the time that the coal strike was just another sign of impending revolution. On a pragmatic level, the coal strike had come at an inopportune time. The coal strike began at the onset of winter and threatened to leave homes and businesses across the state without fuel for heat and electricity.

Soon telegrams were pouring into Allen's office asking for assistance. The most immediate effect on Kansas was the coal shortage the strike created to provide heat for homes. The shortage of coal for heating was particularly acute for those living in the less

wooded parts of the state. As one individual told Allen, the people living next to creeks and rivers ". . . can get timber to burn, but it is the parties living ten miles from the timber, and have stock to look after that needs most attention . . ." [19] One farmer even resorted to burning his fence posts for heat.[20] On November 12, the residents of St. Francis in the northwest corner of the state were reported to be ". . . congregating in hotels which had a few days supply [of coal] on hand . . ." when their own coal supply ran out.[21]

The effects of the coal shortage were not isolated to heating problems. Coal was the major source of power for a wide variety of public services. One by one, they began to grind to a halt during the coal strike. The town of Milford reported that their electrical plant had shut down due to lack of coal.[22] The mayor of Anthony reported, "[we] will be out of coal for our [water] plant inside of three days . . ." and "three fourths of the people of our town depend entirely on this plant for water . . ."[23] Lack of coal also had an effect on agriculture. A resident of Hill City reported that, "hundreds of acres of wheat is rotting in the stacks on account of wet weather but some of this could be saved if we could get coal to operate the threshing machines."[24]

The coal shortage also put the public in competition with the railroads. Railroads, who needed the coal to run their trains, had started confiscating coal shipments that were intended for public consumption. The mayor of Kirwin sent a telegram to Henry Allen saying that a car load of coal destined for the Central Lumber Company had been seized by the railroad, and demanded that it be released at once.[25] There was little the state government could do about the railroad situation. When W. H. Doderidge complained to

A strip mine in southeastern Kansas similar to the kind worked by volunteers during 1919 Coal Strike (Courtesy of the KSHS).

the governor's office about coal seizures by the railroad, he was informed by Clyde Reed, the governor's secretary, that to get car loads of coal released by the railroad Doderidge would have to take the matter up with railroad companies themselves. Reed continued,

> I hope they will do something for you. If they do you are better off than I am. I have a car of coal coming from Scammon shipped October 28 which had been ordered in September. The railroads have 'gobbled' it and don't even give us a pleasant smile on getting it released . . .[26]

Some individuals found their own way around the railroads' confiscation of coal. In Oberlin a person or persons unknown raided the coal cars that the railroad had confiscated. As the mayor of Oberlin put it "people are in need of coal here and likely this coal will all be taken secretly if it is not released."[27] There were also discussions of alternate sources of coal. One individual reported that there was a small deposit of coal east of Melvern that was close enough to the surface that it could be mined using basic farm equipment.[28] At Concordia the chamber of commerce went even farther, and sunk two mine shafts themselves for the town's use.[29]

The situation grew so critical that Allen finally had to act. His first move was to try to negotiate with the miners, who were represented by the UMW and operators, who were represented by the Southwestern Interstate Coal Operators Association. However, neither group proved willing to negotiate.[30] By mid-November Allen had decided to take another approach. He took the problem to the Kansas Supreme Court. Allen did not particularly relish the idea of the government regulation of private industry, but he felt that "in a case where conditions seem to warrant it in order to protect the public it may be

deemed advisable . . ."[31] The situation in the Kansas coal fields was just such a case. The State Attorney General, Richard J. Hopkins, requested the establishment of a receivership. One hundred and fifty mines in Crawford and Cherokee counties were to be handed over to the control of a third party who would answer directly to the state.[32] The original motion had called for the receivers to consist of a representative of the miners, a representative of the operators, and a business man, but the miner and the operator both refused to serve.[33] Even so, the motion was granted, but two businessmen, C. D. Sample and B. S. Gaitskill, were appointed the receivers of the mines, instead of the three man panel.[34] After establishing the receivership, Allen next had to find people to work the mines. Once again, he went to the miners to see if they would be willing to work under state leadership, but the UMW still refused.[35] Allen then put out a call for volunteers from throughout the state to come and work in the mines. Response was immediate; students from local colleges and universities as well as others eagerly volunteered to work in the mines.[36]

It took several weeks to get the operation moving. The volunteers had to be transported to southeastern Kansas. Once there they found that the mines needed a great deal of maintenance. When the strike began, the operators shut off the pumps in the mines, so they had filled up with water. By December 1, the volunteers were ready to go to work in the mines. They were payed $5.00 a day, lodged in tents, and given their meals at cost. They were told they could quit at anytime, but if they did they would have to find their own way back to their homes.[37]

Besides having to provide workers for the mines Allen also had to provide protection for the workers. There was a great deal of concern that the striking miners would retaliate against the volunteers for breaking their strike. The receivers suggested that Allen request the help of Federal Troops, but Allen opted instead to use the State National Guard.[38] The use of the Kansas National Guard would prove to be a bit of a problem. One National Guard officer, upon having his unit activated, wrote to Allen:

> the unusually short notice furnished by this last order, coupled with the prevalent notion on part of the officers and men, that they were virtually discharged makes it impossible to execute the order . . . we are a military unit in name only and such has been the case ever since General Martin ordered our rifles shipped to Topeka last February . . ."[39]

Those units that did report were not well trained. One volunteer miner from Kansas University, a World War I veteran, noted that the ". . . KNG here to guard us . . . are green rookies and mighty reckless with their guns."[40] Luckily for the volunteers, none of the strikers ever attacked them.

However, the strikers were not above sabotage. As early as November 30, strikers had blown up rail lines in mines, damaged steam shovels, and burnt railroad ties.[41]

The strikers were not the only ones who disliked the receivership. Owners of the mines took offense at having their mines taken over by the government. The Jackson-Walker Coal & Mining Co refused to hand over its coal to the receivership until it was threatened with contempt by the Kansas Supreme Court.[42] On at least two occasions train crews refused to transport volunteers and National Guard troops on the basis that the crews would have to live with the miners long after the volunteers and troops had left.[43]

The receivers confronted other problems as well. The most critical problem was the lack of skilled labor. Because of state regulations requiring licensed miners to handle any explosives used in shaft mines, the receivers were only able to operate the strip mines. Even though strip mines required less skill to operate, the receivers would have preferred more skilled miners. The receivers could get plenty of volunteers, but many of them had never seen a coal mine before. On December 3, Sample and Gaitskill urged Allen's secretary to "give special attention to cranemen and steam shovel engineers we . . . have surplus at this time of unskilled labor . . ."[44] In response, Allen offered to bring in skilled labor from as far away as Illinois and Ohio.[45] However, it does not appear that Allen actually did this.

The lack of skilled miners had a bad effect on both the operation of the mines and the quality of coal produced. Because most of the volunteers had never worked in mines before, they often did a great deal of damage to the equipment. The owner of the Italiani Coal Co. wrote to Henry Allen demanding $2000 dollars in damages, because "inexperienced men cannot take care of a plant as my old men did, and yet it must all be repaired."[46] One volunteer steam shovel crew managed to completely incapacitate their shovel by cracking its frame and breaking the hub the shovel pivoted on. The crew even managed to crack the shovel's bucket by trying to raise it when it was frozen to the ground.[47] The lack of skilled miners also had an effect on the quality of coal mined. The coal mined by the volunteers was not run over a screen to grade it, but went straight into the box cars. As a result, there were a great many complaints about its quality. In at least one case the receivers sent out several box cars of coal that were almost entirely slack

(coal dust) and much of that was frozen.[48] At Arkansas City much of the coal that was distributed was returned by the local people because it was of such poor quality it could not even be burned in a stove.[49]

In the volunteer camps themselves there was also some privation. During an inspection of the mines, Allen found that there was a shortage of both shoes and food for the volunteers.[50] Another observer reported that "there are no pails or wash-basins, towels, soap etc. In case cold whether comes on there will be a shortage of blankets."[51] One volunteer from the University of Kansas wrote to his parents that "we boys are out here in the most God forsaken hole in the kingdom [with] no one in authority who knows anything about mining . . ." However, in spite of his complaints the volunteer noted in the end "we had a great lark . . . helping defeat the radical unionist factions and Bolsheviki."[52]

After the volunteers had mined the coal, the receivership had to distribute it, and it was the governor's office that organized the manner in which it was disbursed. Clyde Reed, the governor's secretary, drew up long lists of towns and their specific coal rations.[53] The receivership then distributed the coal to the towns in loads of one, two, or three cars, depending on the size of the town. Allen sent telegrams to towns and cities throughout the state informing the mayors that the coal shipments were being signed over directly to the city government. Allen also instructed the city governments to divide the coal into small portions and distribute it in an official capacity. Since the coal was specifically to prevent emergencies, the cities were not to use a commercial third party to distribute the coal. There were other stipulations as well. Coal was only for use in homes. The Galena *Echo* reported that cigar stores, pool halls, and other businesses had been

forced to close early because of lack of heat. The *Echo* also stated that any person that tried to purchase coal more than once a day would be denied coal completely[54]

The coal itself was not free; receivers billed the mayor's office of each municipality for the cost of mining the coal.[55] Often, though, the coal would go unpaid for. On one occasion C. D. Sample and B. S. Gaitskill complained to the governor, "we receivers are trying to make this business pay out and unless your office will stand behind us . . . we will have a serious deficiency . . ."[56] In one case the mayor of Arkansas City purchased three car loads of coal for $714 and payed for them with a bad check. The receivers sent the mayor a long letter informing him that if he did not settle accounts, the receivers would take the matter up with the Kansas Supreme Court.[57] In spite of these problems, coal shipments were still being sent out long after the mines had reverted back to their original owners in mid December.[58]

Even as the volunteers in Kansas were mining coal, representatives of the miners, operators and Federal government were trying to negotiate some sort of agreement. Finally the three parties were able to agree upon an immediate wage increase of about 14%. In February of 1920, a special committee assigned to investigate the labor situation in the bituminous coal mines raised the wage to between 20 and 30 percent. Even though the miners had been forced to give up most of their demands, the wage increase was a good one. However, the strike cost the UMW dearly in the long run. Without government support the UMW began to lose ground in areas where it had most recently made inroads. Operators throughout the bituminous coal fields of the United States began forcing their miners to sign yellow dog contracts, contracts that prohibited workers from unionizing.[59]

In Kansas, as in the rest of the country, the majority of the blame was laid at the feet of the miners. Throughout the state, miners were condemned. The *Galena Evening Times* chastised miners for laying in a supply of coal for their own families before depriving the rest of the state of coal. One irate farmer suggested that since the miners were refusing to mine coal and causing farmers to suffer, farmers should stop producing food for the miners. "If a coal miner can make the farmer suffer from cold, why should not the farmer make the coal miner suffer from hunger?"[60]

As the strike came to an end in Kansas, the receivers had to tie up several loose ends. The transition from volunteer miners to UMW miners began on December 13 and was completed by December 18. However, troops were left in the district a while longer to maintain the peace, much to the dissatisfaction of the miners. The mines officially reverted back to their original owners on December 18, but there was the stipulation that the operators would have to fulfill all the remaining emergency requests for coal, the cost of which could be billed to the receivers.[61] The receivers made their final report to the Kansas Supreme Court on December 31, 1919. The receivers had distributed 37,433 tons of coal, and had broken even on the mining costs.[62] In fact the only cost that could not be recouped was the $72,000 appropriation made for supplies and pay for the National Guard troops and the volunteers.[63]

Although a coal crisis had been successfully averted, Kansas was left in a state of apprehension. The strike had demonstrated to many that labor disputes could have a disastrous effect on the public. The fact that industry and labor could put the public at risk over their own differences worried many throughout the state. Many also saw the strike as

confirmation that there was some kind of larger plot by leftist revolutionaries. Regardless of how people interpreted the strike, there was a general consensus that something needed to be done to prevent such crises from happening in the future. Thus, the stage was set for the creation of the Kansas Court of Industrial Relations.

Chapter 3

Birth of the Court

The Kansas Court of Industrial Relations was developed as a structured system for dealing with labor disputes resulting from the unique social climate of the state and the nation. The principles and precedents behind the Industrial Court began with William Huggins' search for a solution to labor turmoil. The search would cover several decades, and would entail the examination of hundreds of laws; in the end Huggins' search, combined with Henry Allen's belief in progressivism, and the catalyst of the labor unrest in 1919, would lead to the creation of Kansas Court of Industrial Relations. The court itself would initially spark intense public debate, and would become the pinnacle of Henry J. Allen's career.

The concept for the Kansas Court of Industrial Relations was developed by William Huggins a school teacher turned lawyer. Huggins' early years were difficult ones. He was born into an Ohio farm family in 1865. He was forced to drop out of school at the age of twelve to work on the farm full time when his father was injured. It was not until 1884, at the age of nineteen, that Huggins left the farm in Ohio for Kansas. Once there, he took a job as a laborer on a farm owned by a former school teacher. The teacher, who recognized young William's ability, agreed to teach him in his spare time. After this unorthodox schooling, Huggins attended Kansas State Normal school at Emporia, which he paid for by teaching in a local public school. After graduating from the Normal school, Huggins gradually worked his way up from a teacher to superintendent of schools in Emporia. Even as he taught in the Emporia school system,

Huggins studied law under a local attorney. He passed the Bar exam in 1897, and began a career as a lawyer that would last until Henry J. Allen appointed him to the Public Utilities Commission in 1919.[1]

Huggins' search for a solution to labor turmoil began while he was studying law. In 1894, in the midst of the nation's worst depression up to that point, the workers at the Pullman Car Company in Chicago went on strike. George Pullman, whose company made a variety of railroad cars, had lowered the wages of his workers without lowering the rents in the town of Pullman, the model community he had created for his workers next to the plant. The workers petitioned the Pullman Car Company for increased wages and lower rents. The three individuals who delivered the petition were promptly fired. Many of the Pullman workers were members of the American Railroad Union (ARU), which also represented Engineers, Firemen, Yard Workers, and a wide variety of railroad laborers. At the ARU's 1894 Chicago convention, president Eugene Debs called for a general strike, in which all union members would refuse to handle Pullman cars until the Pullman Company agreed to arbitration of the dispute. George Pullman adamantly refused to deal with the ARU, and used his influence, along with the heads of the railroad industry, to get an injunction placed on the strikes. When the strikers refused to abide by the injunction, federal troops were sent in to break the strike. The introduction of troops sparked a week of violent rioting throughout the rail yards of Chicago. In the end however the strike was broken, and Debs was found guilty of violating the injunction.[2]

Although the majority of the activity during the strike was centered in or around Chicago, the effects were felt nationwide, even in Emporia, which was a major railroad

hub of the Santa Fe. As a member of several fraternal organizations in the Emporia community, Huggins had contact with many of the railroad workers. In the days leading up to the strike, many of the railroad workers in Emporia expressed their apprehension about striking on behalf of events that were taking place hundreds of miles away. In spite of their reservations, when the strike did come, the railroad workers in Emporia went off the job. What the railroad workers probably saw as loyalty to their union, Huggins interpreted as ". . . the tremendous power of irresponsible leadership of organized labor . . ." Huggins would devote much of his time from that point on searching for some way to avoid situations like the Pullman strike.[3]

Huggins studied a wide variety of material in his effort to find a solution for labor turmoil, which seemed to be on the rise. The beginning of Huggins' search for a solution to labor disputes began with the study of the case brought against Debs for violating the strike injunction. However, the violence of the Pullman strike had shown Huggins the shortcomings of injunctions in solving labor disputes. An injunction secured justice for industry and business, but not for labor. In his studies Huggins also looked to other countries for possible solutions. Around the turn of the century, Australia and New Zealand had instituted mandatory arbitration of labor disputes. However, Huggins found these laws lacking, because in most instances arbitration cases were decided on the basis of what was in the best interest of industry and labor, but the interests of the public were ignored.

It would not be until 1911 that Huggins found a legal precedent for the protection of the interests of the public in labor disputes. That year the state of the Kansas legislature

created the Public Utilities Commission. Huggins, who was a member of an Emporia educational club called the Current Club, began researching the new commission with the intention of presenting a paper to his fellow club members.[4] In conducting his research, Huggins stumbled upon a court case, *Munn vs. the People of the State of Illinois*, which quoted Sir Mathew Hale, Lord Chief Justice of England. Hale stated that when private businesses "'. . . are affected with a public interest . . . they cease to be juris private, only.'"[5]

Up to that point, Huggins had found legal precedent for the protection of the interests of business and the public, but there was still the issue of protecting the interests of labor.[6] Huggins found his answer in 1916, in studying the Supreme Court case *Wilson vs. New*. In this case the Supreme Court issued the opinion that a governing body in an emergency could issue temporary orders setting laboring standards and wages.[7]

Huggins now had the basis for a law that seemingly protected the interests of industry, labor, and the general public. In October 1919, a month before the outbreak of the Kansas bituminous coal strike, Huggins, in an address to the Topeka Rotary Club, outlined his idea for a tribunal that would oversee labor disputes within industries that were crucial to the public's survival. Among the people in attendance was fellow Rotarian Henry J. Allen. The speech had a lasting effect on Allen, and several weeks into the strike Allen went to the office of the Public Utilities Commission to talk to Huggins. Huggins latter related the conversation to William Connelly, the secretary of the Kansas State Historical Society:

> He [Allen] mentioned my Topeka Rotary address and asked me if I really believed I could draft a bill which would prevent strikes. I told the governor that I could draw a bill along the lines of my speech and I furnished him a carbon copy of the speech as read to the Rotary Club the month before.[8]

Huggins then began the slow task of crafting the industrial court law. As it turned out writing a law was a good deal more difficult than making a speech about one. On more than one occasion, Huggins wrote a section of the bill, but then decided it was inadequate and would start over. Throughout the process, Huggins consulted a number of lawyers on various aspects of the bill. He was also able to secure the aid of Senator Francis C. Price, chairman of the Kansas Senate Judiciary Committee. Huggins had originally planned for the tribunal to be a subdivision of the Kansas Supreme Court, with the judges appointed by the Supreme Court. However, Allen made it clear that he wanted the governor to have the power to appoint the judges of the Kansas Industrial Court. This dismayed Huggins, but he complied. As a result, the Kansas Court of Industrial Relations was an independent tribunal, but since the judges were appointed by the governor, Allen was able to exert some control over the court. Throughout the process of writing the industrial court bill, Huggins was constantly turning to his law books to refute critics of his plan. He later stated "it was [through] their criticism of my ideas that I gained my greatest advance [of] age." Many of the people Huggins consulted felt that such a tribunal would have to be voluntary and its orders non-binding. Other people wanted an industrial court that would serve almost as a surrogate Supreme Court for dealing with labor disputes. In the end, however, Huggins was able to write the bill almost exactly as he had envisioned it.[9]

With the completion of the bill, Governor Allen called a special session of the Kansas legislature. On January 5, 1920, both houses of the legislature met together to hear the governor's opening statement. The statement began with Allen relating the events of the coal strike that had led to the calling of the special session. Then Allen stated, "it seems to me that legislation is imperatively needed and should be immediately enacted." The governor then proceeded to outline the Industrial Court bill point by point as written by William Huggins, and concluded by stating the six goals of the legislation. The first goal was to make strikes and lockouts unnecessary; the second and third goals were to maintain ". . . an adequate supply of those products which are absolutely necessary to the sustaining of the life of civilized peoples" at a reasonable price. Goals four and five called for the protection of laborers and the limitation of waste; and finally, Allen wanted the abolition of violence ". . . as a means for the settlement of industrial disputes." This statement constituted the end of his discussion of the industrial court, but Allen went to promote several of his other programs that were not directly related to the bill. He called for the deportation of radicals and ". . . those unfit to become citizens . . . " He also promoted plans for workmen's compensation, a State Employment Bureau, anti-profiteering legislation, and an increase of the salaries of state officials and public school teachers. However, Allen closed his address to the legislature by asking that they limit themselves to the passage of the Industrial Court bill.[10]

With the conclusion of Allen's address, the houses separated to hold deliberations on the Court of Industrial Relations Act. When the Industrial Court Act was introduced into the House of Representatives, the Representatives voted to suspend the rules

governing procedure and advanced the bill to its second reading. This was probably done since most of the Representatives had already received a copy of the bill and were familiar with it. The House of Representatives then referred the bill to the committee of the whole. Referring the Court of Industrial Relations Act to the whole House of Representatives had the effect of making the deliberations public. The House invited representatives of industry, labor, and the public to come and present their case for or against the bill.

Frank P. Walsh, among others, spoke for the labor movement. Walsh, an attorney as well as the former member of several wartime labor boards, spoke for seven hours.[11] Briefly, the position of labor, as presented by Walsh, was that "the right to strike . . . cannot constitutionally nor morally be taken away from the laborer." Walsh went on to describe the bill as ". . . the 'cat o' nine tails' with which capital would scourge the back of labor forever and a day."[12] Given the hostility against the labor movement at the time, the views expressed by the labor representatives against the bill did not meet with much approval. Congressman Frank L. Martin pointed out that labor unions were loyal to "International officers" and because of this, he insinuated, they could not be loyal to the United States.[13]

In spite of the bitter attack of the bill by the labor movement, in an unusual twist, those representing industry in the House of Representatives sided with labor. Capital, represented by J. S. Dean, a mine operator, opposed the bill on the basis that it was unconstitutional and ". . . provides for involuntary servitude."[14] This belief that the Industrial Court Act was unconstitutional stemmed from the fact that the Act attempted to

control private business. However, there was a major difference between the arguments of labor against the bill and industry against the bill. Labor's position insured that they would be condemned as being somehow un-American. However, when industry opposed the bill their arguments were described as ". . . the most logical . . . arguments against the measure . . ."[15]

William Huggins was present to support the bill. Huggins made the argument that the Industrial Court Bill was fair to both industry and labor. However, Huggins made a point to single out labor by saying "the man who places his allegiance to his union before his country and state is not a good citizen . . ." In the midst of the partisanship of all factions in the controversy over the Industrial Court Bill, there was at least one voice of moderation. William Allen White, who represented himself as a member of the general public, expressed the view that the Court of Industrial Relations act was an advance in democracy. However, in a private letter to Allen he warned:

> In drafting your labor conciliation bill, you must remember that it will be used in times when public sentiment will be more nearly with the labor unions than it is today . . . there is, as you know, much bitterness among the people and a desire to punish the union labor leaders. This bitterness may result in drafting a law which would be so offensive to labor that it would not get anywhere if enacted.[16]

The bill, as introduced in the Senate, took a slightly different route then it had in the House of Representatives. The Senate version of the Industrial Court bill was not deliberated over by the whole, but rather referred to the Judiciary Committee. The Judiciary Committee made some minor changes to the bill and reintroduced it as a substitute bill. The major differences between the Senate bill and the House bill, were in

the amount of changes made to each. The Senate bill, although it was a substitute for the original, was essentially the same bill as written by Huggins with a few minor changes in wording. It had not been subject to the public debate, whereas the House bill had many more amendments, many of them the result of the open hearings. In the end, the House adopted the Senate version, and it was voted on in both houses. The final vote in the Senate was thirty-three in favor, five opposed, and one abstention.[17] The House of Representatives followed a similar pattern, with 104 votes in favor of the bill, seven opposed, twelve absent or not voting, and one not voting because he was dead.[18]

The opinions of the legislators expressed in the "Explanation of Votes" that were recorded in the journals of both the House and Senate are indicative of the forethought given by the legislators. Among a small minority in the legislature, there was sense that their actions represented the will of the people, but not necessarily the best course of action for the state. W. A. Disch, a House Republican from Parsons, who abstained from voting, expressed the view that the Industrial Court law set a dangerous precedent:

> . . . the bill as it now stands . . . as a whole is vicious and dangerous, for the reason that it opens the way for state regulation and control of practically all private activities . . . When the evils which have led to strikes, because of just grievances, are remedied, there will be no strikes. I am sure the people of the state generally do not comprehend the full meaning of the bill as it now stands.

Although they were a distinct minority, some legislators followed their own opinions rather than those of their districts. A House of Republican expressed the view that the Industrial Court law was shoved down his throat, and as a result voted against the bill.[19]

The "Explanation of Votes" also indicates a subtle partisanship. The Republicans held a vast majority in both houses. There were 124 members of the House of

Representatives of which fourteen where Democrats.[20] In the Senate the ratio of Republicans to Democrats was not as steep, but there were still nine Democrats out of thirty-nine Senators.[21] A simple examination of the vote would seem to indicate a bipartisan attitude toward the bill. In the House only three of the fourteen Democrats voted against the bill.[22] In the Senate only two of the nine Democrats voted against the bill.[23]

However, there was still an underlying dislike for the legislation among Democrats that was not wholly apparent from the vote. James Malone, a Democrat from Herndon, expressed the view that the government had acted too quickly, and that "when men's passions are aroused and the accumulated vengeance of the public is directed upon labor . . . there is serious danger of doing a grave injustice to the laboring class." However, Malone voted in favor of the Industrial Court because his constituency demanded it.[24] A similar view was expressed in the House of Representatives. J. A. Lyons, a Democrat from Langdon, was divided between his own view of the court and the demands of his constituency:

> I believe this law is a step backward and not forward - that it helps to forge the chains of slavery upon human beings and ties the hands of labor. That it is also undemocratic in principle, as it puts too much power in the hands of the executives of the state; but on account of the prejudice and misrepresentation of the press that has gone out over the state, the people demand the law; therefore I vote Aye.[25]

Such statements expressed in 1920 were symptoms of the underlying Democratic opposition which would eventually come to the surface in the final years of the court.

The Court of Industrial Relations Act, as passed, consisted of thirty sections creating a system for the handling of labor conflicts that threatened the public good. The Act created a three-judge tribunal to hear labor disputes. The judges were to be appointed by the governor, and the terms of service of the first three judges appointed to the court would be staggered. The first judge, who would serve for three years, was designated the presiding judge. Of the remaining two judges, one would serve a two-year term and the other would serve a one-year term. All judges to serve on the court after the first three would serve terms of three years. The reason for staggering the terms of the first three judges was to establish seniority. The act states that after the term of the presiding judge expires the judge with the most seniority would become the presiding judge. However, if all the judges served equal terms from the outset, they would all have equal seniority. The wage of each judge was set at $5,000 per year, to be payed on a monthly basis.[26] The court itself would maintain its office in Topeka, and was to keep a public record of all its proceedings. The court also had the power to administer oaths and establish rules of conduct provided they did not violate any laws of Kansas or the United States.[27]

The Kansas Court of Industrial Relations Act was designed to oversee very specific areas of industry, and was never meant to be an all encompassing labor relations law. The Industrial Court was to focus on industries that were ". . . affected with a public interest and therefore subject to supervision . . ." In other words, the court only had jurisdiction over industries that were considered necessary for the public's well being. The law singled out five areas of private industry that would be constituted as industries affecting the public good. The first industry was food production. According to the

Industrial Court, food production involved ". . . substances [that] are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings." The second industry was the clothing industry. As with the food industry, the court had jurisdiction over all stages of clothing production. The third industry was ". . . mining or production of any substance or material in common use as fuel . . ." It is interesting, but not surprising, that mining is the only industry that is specifically singled out in the whole bill. This is undoubtably because a mining strike precipitated the legislation. The fourth area of industry under the purview of the court was transportation. Although it is not specifically stated, this subsection of the bill applies almost totally to railroads. In 1920, the railroads were still the primary means of transporting goods. The final area of industry singled out by the Kansas Court of Industrial Relations Act was public utilities. This subsection tends to overlap with several of the other subsections. Fuel production and railroad transportation qualified as public utilities, but were considered separate industries. This final subsection was meant to cover all the utilities that were not covered in the previous subsections, such as telephone, electrical, and water service.[28]

The main function of the Industrial Court was to serve as a mediator between industry and labor within essential industries. The court had jurisdiction to initiate its own investigations into the operations of the industries deemed necessary to the public good. Besides being able to initiate its own investigations, the court could also hear complaints either from individual laborers, labor organizations, employers, or groups of at least ten taxpaying citizens. The court also had the power to make orders affecting the conduct of

an industry, employment, working and living conditions, working hours, rules and procedures, and minimum wages. The only major stipulations the court faced in fulfilling its role as arbitrator were that it could only mediate in cases in which the public was endangered and then only in those areas of industry deemed essential. How these aspects of the bill were determined in the years that followed would prove critical to the Court's ability to function.

The Court of Industrial Relations Act also specified the rights of employees, as they saw them, within the essential industries. According to the law, every worker has a right to a fair wage as well as a healthy environment. The law went on to say that the worker had the right to select his own employer ". . . and to make and carry out fair, just and reasonable contracts . . ." with that employer. Also under the act, labor organizations were recognized as legal entities, which could be represented in cases before the court by their officers. This section of the law also called for voluntary incorporation of labor unions, thus making them business organizations subject to investigation and control. However, this was purely optional on the part of the union, and unincorporated as well as incorporated unions were allowed to participate in collective bargaining.[29] The court also had jurisdiction over contract disputes which were ". . . found to be unfair, unjust or unreasonable . . ."[30] Violations of the act were punishable by a fine of up to $1000 or imprisonment in a county jail for up to a year.[31] However, the Court had no policing power so it had to rely on state's judicial system to enforce its rulings.

The most well publicized and controversial aspect of the bill was the so-called "anti-strike clause." It is state that:

> nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry . . . to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries . . .

This aspect of the Court of Industrial Relations Act produced intense rhetoric. Although there were similar sections of the bill which prohibited lockouts by employers, the anti-strike clause became the focal point of the bill because it was interpreted by industry, labor, and the general public as a means of crippling the labor movement.[32]

The most nondescript part of the law was a section that transferred the duties of the Public Utilities Committee to the Industrial Court.[33] There were several reasons for this action. The first was the wish of the legislature to get the most out of the Industrial Court. The legislature felt they could conserve funds by making the Court fulfill the duties of two departments. The second reason for transferring the duties of the Public Utilities Commission to the Industrial Court, was that Huggins saw a direct correlation between the two. The Industrial Court was vested with the power to set wages, the Public Utilities Commission was vested with the power to set the rates of Public Utilities.[34] Another possible reason for absorbing the Public Utilities Commission into the Industrial Court was that it virtually guaranteed that Huggins, as the presiding judge of the Public Utilities Commission and author of the Industrial Court act, would be the first presiding judge of the Industrial Court. Regardless of the reason for making the Public Utilities Commission part of the Industrial Court, this rather minor aspect of the bill would become a major point of contention in the future operations of the court.

The supporters of the Industrial Court act saw it as a wholly unique piece of legislation. However, the creation of a system of labor arbitration in Kansas was not as distinctive when examined on an international scale. Although the Kansas Court of Industrial Relations Act was a unique piece of legislation, there were other countries that had been using similar systems for dealing with labor turmoil. The two countries best known for their systems of labor arbitration were Australia and England. Australia had been experimenting with different forms of labor arbitration since the late 19th century. The system of labor arbitration in Australia, like that in Kansas, was sparked by intense labor conflicts in the 1890s. The Australian system of labor arbitration like that of Kansas was compulsory. However, the Australian arbitration system covered all varieties of industries, and not just those deemed essential. Probably the most striking difference between the Australian arbitration system and the Kansas Court of Industrial Relations was the respective roles of labor in both systems. Within the Kansas system, many labor organizations adamantly opposed the system on the grounds that it would be used as a means of suppressing the labor movement. In Australia, on the other hand, the labor arbitration system was promoted by organized labor. This major difference was the result of the role played by each labor movement in their respective country. In the United States the labor movement was used to having business interests supported by government legislation working against them. As a result, most labor unions in Kansas saw the institution of the Industrial Court as just another example of business and government working to suppress labor. In Australia, the labor movement had a much less adversarial relationship with government. The Australian labor movement, which drew

on labor ideologies that went as far back to 18th century England, had organized itself into to a labor party. It was because of the level playing field between industry and labor, created by the Australian Labour Party, that labor organizations in Australia were more supportive of an arbitration system.[35]

England had also developed an arbitration law to deal with increased labor unrest at the end of World War I. The English Industrial Court was more similar to the Kansas Industrial Court than the Australian compulsory arbitration laws. The law, passed a month and a half before the Kansas Court of Industrial Relations Act, created a standing arbitration board which had the power to issue binding orders to both labor and industry. There were two major differences between the Kansas Industrial Court and the English Industrial Court. The first difference lay in the fact that the English Industrial Court was voluntary. Although the court did have power to issue orders, it did not have the power to initiate investigations on its own. The only way a case could be brought before the court was if a representative of labor or industry petitioned it. The next major difference between the two labor relations systems was that the English Industrial Court answered to the Minister of Labor. Within the Kansas system, the Industrial Court was theoretically under the control of the State Supreme Court, but all appointments to the court were controlled by the Governor.[36]

Although the idea for compulsory arbitration was not a new one internationally, it was a new innovation for Kansas and the United States, and reaction to the Court of Industrial Relations Act was immediate and intense. Between December 1919 and February 1920, the governor's office was flooded with thousands of letters commenting

on the Industrial Court. The labor movement took the clearest stand on the Industrial Court, opposing it almost entirely. In spite of the fact that the Industrial Court recognized labor unions and collective bargaining, most unions focused on the sections that prohibited striking. The Industrial Court's anti-strike clause represented a threat to organized labor and they reacted accordingly. A local union of the United Mine Workers of America in Arcadia, Kansas, wrote to Allen saying, "we hold that such atrocious legislation would drive the laborers of the state to anarchy and bolshevism as a last resort as was the case in Russia."[37] The Brotherhood of Railway Carmen of America at Arkansas City sent a petition calling on their representatives to use all their influence against the bill.[38] The Central Labor Union at Parsons were ". . . opposed to the enactment of this legislation, be cause[sic] we believe it to be undemocratic, unpatriotic and un-American."[39]

In some cases labor's reaction to the creation of the Industrial Court was hard to interpret. Many of the complaints against the Court came from labor unions that were not even subject to it. The Carpenter's and Joiners Union of Chanute ". . . unanimously adopted the . . . resolution protesting against any legislation that will deprive the member[s] of organized labor the right to strike. . ."[40] The Carpenter's and Joiners Union of Emporia also came out in protest against the Industrial Court, calling it "Kaiserism."[41] However, under the Court of Industrial Relations Act, building trades were not considered essential industries. Similarly, a janitors' union in Kansas City protested ". . . against any legislation taking away the rights and privileges of working men to strike . . ." in spite of the fact the law could never be used against them.[42] Henry Allen interpreted

the protests of these unions to be simply the result of them not clearly reading the bill. In replying to a Fire Fighters Union that had protested the bill Allen stated ,

> It is apparent to me that you have written without very much knowledge of all of the proposed legislation. The legislation in question does not touch the city fire fighters union. It relates only to those who work in essential industries . . .[43]

However, the fact that all three union protests refer to workers in general, and not to their specific trade, could indicate that there was a sense of labor solidarity at least in opposition to the court. Another explanation for why so many labor organizations opposed the bill was that they may have been acting on orders from their international officers. Most of the complaints against the Industrial Court came from unions affiliated with the American Federation of Labor (AFL), who bitterly opposed the Court. The officers of the AFL may have called upon their affiliates in Kansas to start a letter writing campaign against the Court of Industrial Relations Act. However, many unions that were effected by the Court of Industrial Relations took no side during the conflict. Many of the unions that would latter bring cases before the Industrial Court, many of whom were AFL affiliates, remained conspicuously silent during the debate over the Court.

In any event, Allen did his best to play down the significance of the anti-strike clause when corresponding with unions. In most cases, Allen tried to present the least offensive interpretation of the anti-strike clause to the labor movement. "The proposed law is not an anti-strike law. It is something infinitely different. It provides the machinery which renders strikes unnecessary . . . "[44] The de-emphasizing of the anti-strike clause and the promoting of the parts of the bill that labor would support became the common tactic for dealing with the criticism from labor. In a reply to the United Brotherhood of

Maintenance of Way Employees and Railway Shop Laborers Union the governor's secretary Clyde Reed stated

> . . . Governor Allen is the last person in the state who would deprive labor of any of its rights. The proposed bill is not such a bill. It makes strikes unnecessary by giving labor what it has always demanded, a chance to be heard before the tribunal of public opinion. This bill guarantees the right of collective bargaining and provides for equal and exact justice to all who come before it.[45]

Often the governor's office would attempt to placate labor's fears that the government and industry had united for labor's destruction. Clyde Reed pointed out to the UMW local at Pittsburg that "the law is opposed by employers as well as by labor, good proof that the State is not taking sides against labor . . ."[46]

Industry's reaction to the Court of Industrial Relations Act was more mixed than labor's. There were a few businessmen who opposed the bill. The most prominent of these were the individuals who represented industry before the House of Representatives during the deliberations over the act. As with those representing industry in the House, most business men in opposition to the bill feared the power it gave government over private business. This view can be summed up by a businessman from Hays who stated "I find that it [the Industrial Court] provides for the creation of comprehensive system of State Socialism for the state of Kansas . . ."[47] However, industry's opposition to the bill was not uniform as it seemed to be in the case of labor. L. E. Moses, one of the individuals who appeared before the legislature representing industry, later retreated from his opposition to the bill. In a letter to Allen, Moses explained that he ". . . did not oppose the intent and purpose of the Bill . . ." only the way it was written.[48]

In supporting the Court of Industrial Relations Act, industry also focused on the anti-strike clause. Much of industry's support for the bill stemmed from the fact that they saw the Court as a means to destroy the labor movement. Many businessmen felt that labor unions had gone unpunished too long. "It has been the rule . . . for the state officers and local officers to permit, and even encourage almost any amount of coercion, violence and almost complete anarchy on the part of trade union members. . ."[49] The Industrial Court was seen as the solution. As one individual put it:

> . . . what the State and entire country need is an anti-strike Bill . . . We are fighting against combinations and trusts yet the American Federation of Labor is the biggest and most vicious of all and thus far has had free action[50]

It is interesting to note, that when Allen received letters from supporters of the Industrial Court who saw the law as simply a form of strike-breaking, he did little to dissuade them from this view, as he had with labor.

The general public for the most part favored the act. The views of members of the public were closely tied to their fears of labor unrest, foreigners, and radicals. Although Allen and his supporters touted the Industrial Court as a means of dealing fairly with both industry and labor, the public saw it as a means of controlling a labor movement that, in their view, had run amuck. "Bolsheveki[sic], Communism and all other isms are not a drop in the bucket compared to the arrogance of the union labor chiefs . . ." The public felt that if the Industrial Court were to "abolish the strike and compel labor to submit their demands to a fair and impartial board, . . . the vocation of the labor agitator would soon

disappear."[51] To most people the labor unions, not industry was the enemy, "the Labor Unions are like spoiled children, they do not know what is best for them."[52]

The Industrial Court was also seen as a way of controlling foreigners and radicals who the public felt were undermining the nation. Although radicals had little, if anything, to do with the creation or purpose of the Industrial Court, the public still saw the court as a means of destroying radicalism.

> . . . let Kansas as she has in the past, make the first law to this effect; that the States of the Union and the United States will pattern after and in a measure stop Bolshevikism, IWWism, radicalism, socialism, and every other ism that is conjured up in the fertile brains of cranks, fools and educated bad men who lead the masses to commit these excesses.[53]

Closely associated with the fear of radicals was a fear of foreigners, which was also visible in the public's views on the court. After World War I there was a strong sentiment that foreigners from southern and eastern Europe were spreading subversion throughout the nation, and Kansas was no exception. An attorney from Ottawa, Kansas, felt that the Industrial Court should work to control the power of the "foreign element" within the labor movement. "Provision should be made that anyone who is not a citizen of the United States should not be permitted to vote for the election of any officer or upon any other subject relating to the conduct and operations of such unions . . . "[54] Allen's reply to this, although meant to exonerate immigrants, revealed his own prejudice against foreigners. Allen said that

> . . . the men who run the radical end of the show are naturalized Americans and generally from the Scotch, Irish, or English. They are more vicious and more dangerous than the Italians or Poles, because they do the thinking and create the initiative, using the ignorant foreign element to furnish the back ground.[55]

In some cases, individuals opposed the bill because they felt it did not do enough to control labor, foreigners, and radicals. One industrious individual, A. M. Meyers, singled out ten areas that needed to be corrected for the Kansas Court of Industrial Relations to be ". . . an effective strike-breaker." Among the problems Meyers found with the court was that by allowing any laborer to file a petition the ". . . bill would enlarge the necessity and power of the agitator." Meyers felt that if anyone could file a petition, radicals would flood the court with petitions to raise their own prestige.[56] Supporters of a stronger bill were not limited to the common citizenry. One legislator had told Allen before the special session, "I have always believed that strikes should be made illegal . . . I have no doubt that I shall be in favor of going further than your proposed bill."[57]

There were also quite a few people who took an opportunistic approach to the creation of the Industrial Court. There were several requests from individuals and organizations for appointments to serve on the Industrial Court. James G Strong, a Kansan in the United States House of Representatives, recommended a person for service on the court before the special session had even met. However, Representative Strong was quick to point out that he was not handing out patronage because "this man does not live in my district and my only incentive for making the suggestion is that I think he is peculiarly fitted to serve upon such a Court."[58] Others were not as concerned about giving out patronage as Representative Strong. One correspondent from Atchison stated "thinking you may be disposed to favor this part of the state with a member [on the court] I wish to offer for your consideration a young man of this city for such a place."[59] The Kansas Engineering Society also attempted to get one of its members appointed to the

Industrial Court. The Engineering Society felt an engineer would be the best choice because engineers ". . . stand naturally in an impartial attitude between industry and labor in the interest of maximum economic efficiency. . ."[60] A man from Kansas City, Missouri, even offered to come to Topeka to serve as an expert on labor unrest.[61]

Interest in the act was not confined to Kansas. Many people wrote from out of state to express their views on the court. Out-of-state opinion on the court tended to parallel the opinions of Kansans. Supporters of labor from outside the state found the act as reprehensible as those within the state. One man from Arkansas chastised Allen, "you have not safe guarded[sic] a thing that a laboring man holds dear. You wish to make him a slave whom may be treated as a bunch of leach politicians wish to treat him."[62] Out-of-state supporters of industry also had reactions to the bill similar to those of in-state supporters of industry. A man from Colorado questioned the effectiveness of the bill as a method of strike-breaking because "there is nothing in it [the bill] to prevent the laborers from quitting at any time they see fit . . . they wouldn't call it a strike but it would have the same effect."[63] There were also out-of-state supporters of industry who agreed with the bill, because it looked like a means of crushing the labor movement. The owner of a hosiery company in Philadelphia said "it sure does look at last [that] legislators of all kinds are growing wiser, and the bluff they have been handed by labor leaders of all kinds is being appreciated at its true worth."[64]

There was also a great deal of interest in having a similar law passed in other states. An Arkansas state senator requested copies of the act, before it was even passed in Kansas, because "our Legislature meets on the 26th day of the next month and I want to

have just such a law in force in Arkansas . . ."[65] Similarly, members of the state legislature of Massachusetts requested copies of the bill because "there is a certain sentiment in this State . . . that this is a vary[sic] good Law and it might be useful in this state."[66] It was also reported to Allen that similar laws were being proposed in New York, New Jersey, and Nebraska.[67]

All the correspondence on the Kansas Court of Industrial Relations revealed more than opinions about the court. The correspondence also indicated the level of prestige Governor Allen had received from the bill's passage. Henry J. Allen went from being a fairly popular, but little known progressive governor, to being a nationally recognized savior of the public from labor unrest. The credit for the Industrial Court was given almost entirely to Allen. For example, an attorney from Beloit wrote, "I must take time to congratulate you upon your vision and splendid courage . . . it is fine indeed . . . to have for its executive one of its own real kind of people, alert, forestepping and courageous."[68] Some individuals went almost to the point of idolizing Allen.

> . . . a really big man has arisen from our midst who is fearless enough to meet the biggest problem with which the State was ever confronted in an intensely practical manner, and in our opinion, the only manner in which it will ever be satisfactorily settled. You have set the pace for the Nation and the eyes of a large proportion of the 110 million of our population are on you and their hearts are beating in unison with yours in the battle and with one accord are wishing you God speed . . .[69]

The culmination of Allen's popularity came almost five months later in New York City. On May 28, 1920, Henry J. Allen debated Samuel Gompers, president of the AFL in Carnegie Hall. The night of the event, the hall was filled to capacity with people from all levels of society. The Chairman of the debate declared it to be one of the greatest

debates since the Lincoln/Douglas debates almost 70 years earlier. In spite of this great gathering, the debate proved to be rather anticlimactic, with neither side really answering the challenge of the other.[70] Gompers argued the position that unions had an inalienable right to strike. "The attempt to deny to free men by any process, the right of association, the right to withhold their labor power . . . is an invasion of man's ownership of himself."[71] On the other hand, Allen stuck to promoting the industrial court as the progressive solution to labor unrest. "Will any man say that government has not the right, backed by public sentiment, to protect the public?"[72] Both debaters received their share of applause and boos, but in the end both were declared the victor.[73] The event helped boost Allen into the national limelight. There was even talk of Allen running for Vice-president.[74] William Allen White, a close friend and supporter of Allen, even went so far as to recommend him as a potential presidential candidate.[75]

The Kansas Court of Industrial Relations began as a young lawyer's search for a solution to labor unrest after the Pullman strike of 1894. William L. Huggins' search for a solution to labor turmoil ultimately brought him in contact with Henry J. Allen, who appreciated Huggins' progressive views on the settlement of labor disputes. Allen, after the 1919 coal strike, gave Huggins his chance to implement those views in the form of an industrial court. The result was the Court of Industrial Relations Act that created a three-judge board for overseeing disputes within the industries of food, clothing, fuel, transportation, and public utilities. Reaction to the new court varied from labor to industry to the general public, but all of these groups' opinions fixated on the acts anti-strike clause.

Allen himself became widely acclaimed for his role in the creation of the Court. However, the actual operation of the court would prove to be much more involved than Allen, Huggins, or the general public could foresee. Given the political and economical situation of both Kansas and the Untied States, the practical matter of finding equitable solutions to labor disputes would be far more complicated than a simple process of arbitration. In any event, the Kansas Court of Industrial Relations officially went into operation February 2,1920, with William Huggins as its presiding judge.

Chapter 4

1920: An Overwhelming Job

The Kansas Court of Industrial Relations was created to bring peace between labor and industry by providing a tribunal to adjudicate disputes and protect the public. This role as mediator was at its height in the Court's first year of operation. However, the Court's ability to provide lasting solutions to labor problems was marginal. Although the Court had been opposed by many labor groups, a few small union locals, many of whom had previous experience with government labor controls during the war, were willing to use the Court. However, interest in the Court by unions on the district and national level was nonexistent. Unorganized workers, who previously had no support, saw the Court as a means of getting concessions from their employers. The Court itself proved to be more than willing to hear cases from these groups. However, the Court had to walk a line between the interests of labor, business, and the public, so the Industrial Court proved to be a mixed blessing to laborers. The work load placed on the Court also hampered its ability to provide effective service. The Court not only had to deal with industrial disputes but also had to deal with hundreds of public utilities cases as well. Also, in spite the Court's overwhelming support from most state legislators there were serious issues about its power and jurisdiction. The ambiguous mix of success and failure made the Industrial Court's first year of operation an important one.

Before the Court could go into action, it needed to be staffed and allocated office space in the capital. The presiding judge was the Industrial Court Act's author William Huggins. Huggins' authorship of the act, as well as his position on the Public Utilities

Commission, made his appointment to the Court of Industrial Relations a foregone conclusion. The choices for the other two judgeships were not as clear. Some thought that since Huggins had been selected for the new Court, Allen would choose the other two members of the Public Utilities Commission as judges. Another potential candidate was Senator Francis C. Price, who had introduced the Industrial Court Act in the Senate. Also on Allen's list of prospective judges was a diverse group of both former and current state legislators.[1]

In the end, governor Allen selected his personal secretary, Clyde Reed, and Republican state senator George H. Wark to fill the two judgeships. Reed, the former editor of the *Parsons Daily Sun*, earned his position as the governor's secretary after serving on Allen's campaign committee in 1918. He was widely known as an able politician in his own right, and his appointment to the Court was seen as a reward for his loyal service to the governor. Wark's background, on the other hand, contrasted with that of Reed. Wark was born into a farm family in Montgomery County near the Oklahoma boarder. He attended Kansas University and graduated with a law degree in 1903. He spent the next decade and a half practicing law in Caney. Wark's political career had begun with his election to the state senate in 1917. However, his career was interrupted when he went oversees to fight in the war, and the 1920 special session was the first legislative session he had attended in its entirety. Newspapers described Wark as shy, but intelligent and well qualified for the judgeship.[2]

Finding a staff for the Court of Industrial Relations was less time consuming. With the exception of a few specialized positions that were appointed later, the staff of

the old Public Utilities Commission carried over to the Industrial Court.[3] The Court's staff included a clerk, an assistant clerk, a commerce counselor, an attorney, a rate clerk, a commissioner, a chief engineer, three assistant engineers, a chief accountant, two assistant accountants, two reporters, thirteen stenographers, and one comptometer operator.[4]

In spite of the uproar that had accompanied its creation, the Court of Industrial Relations went into operation with little fanfare. In fact, the only notable event, according to the *Topeka Daily Capital,* was Judge Reed spending $1.65 at a local barbershop getting "slicked up" for his new position. On February 2, the judges of the new court unceremoniously trickled into the office of the Secretary of State and took their oaths of office. Afterwards, the judges returned to their offices. The Court of Industrial Relations was to occupy the same offices as the old Public Utilities Commission. For Huggins, as a former member of the commission, this simply meant returning to his old office. The other two judges moved into the other vacated offices. The rest of the day was spent discussing appointments, arranging staff wages, and receiving the Court's first complaint filed by Attorney General Richard J. Hopkins, which called for an investigation of the coal industry.[5] Other complaints quickly followed.

Although never popular with most labor unions, the Court of Industrial Relations in its first year found some popularity among unorganized workers and individual union locals. In fact, the second dispute to be brought before the Court came from several unorganized employees of the Topeka Edison Light Company. The Edison Light Company provided basic electrical service for the city of Topeka, and the employees

involved in the case were responsible for the care and maintenance of the company's power lines. Although not the first case to be handled by the Court, the Edison Light Company case was the first to be initiated by a non-governmental group, and it established several important precedents in the Court's operation.

The case itself was not very dramatic, and took less than two months to finish. The linemen and groundmen of the electric company wanted to adjust their contract. They asked for a basic wage increase, and for a change in the way their work hours were calculated. Under normal conditions the linemen and groundmen of the company would report to the main supply building in the morning to collect their tools and supplies. They would then go out to maintain the electrical lines. At the end of the day they would report back to the supply building to drop off their equipment. Under this system, they were only paid for the time they were at the work site, and not for the time going to and from the supply building and the work site. The workmen asked for compensation for the time spent traveling between the supply building and the work site.[6]

In ruling on the Edison Company case, the Court had to give meaning to the provisions of the act that created it. Under the statute, the Court could set a fair wage, but what constituted a fair wage? In making this judgement, the Court took into consideration the standards laid down by the federal Esch-Cummins Act, which established wage standards for railroad workers. The Esch-Cummins Act evaluated wages by examining wage levels in similar fields of work, as well as cost of living, work hazards, skill levels, responsibility levels, regularity of work, and regularity of wage increases. Besides the Esch-Cummins' wage standards, the Industrial Court also took into account the fidelity of

the individual employees. However, the Court was careful not to overstep its authority, and pointed out that it could only set wage minimums, and then only for a specific period of time.[7]

In deciding the Edison Company case, the Court focused on working conditions and the workers' cost of living. The Court sent out questionnaires to local wholesale grocers to determine what employees would have to pay to provide for basic needs. The Court found that the cost of food and supplies in some cases had increased 84% between 1914 and 1919.[8] The Court also received information about the working conditions the employees worked under. In an anonymous letter to the Court, an employee described the dangers faced by electrical workers. The employee described cases in which linemen were electrocuted because the high voltage lines were so close together that the worker could not fit between them. The employee also pointed out that in most cities linemen working with high voltage lines were required to have another lineman with them to provide assistance if there was an accident. However, the linemen of the Edison Company worked on high voltage lines alone.[9] These work conditions undoubtably affected the final ruling of the Court.

The final decision of the Court came on March 29, 1920. The Court found that the wages paid to the Edison Company employees were not fair. The Court ordered that a temporary minimum wage be set at sixty-seven and a half cents per hour for an eight our day, and time-and-a-half for overtime. The Court also determined that the company should pay its employees for the time spent going to and from the job site. The order was scheduled to take effect April 1, 1920.[10] However the Edison Company, in a particularly

accommodating gesture, chose to pay the wages from the time the complaint was filed with the Court in February. The company also agreed to pay the increased wages not only to the employees who filed the complaint but to all of its workers.[11]

Even as the Court of Industrial Relations deliberated over the Edison Company case throughout February and March 1920, it also was taking on other cases. A large portion of those cases were brought by varying combinations of employees of the Joplin and Pittsburg Railway Company. The Joplin and Pittsburg (J&P) Railway was an interurban electric railway that operated lines throughout Crawford and Cherokee Counties in southeastern Kansas, as well as across the Kansas-Missouri boarder as far east as Joplin.[12] The railroad was established in 1895 as the Pittsburg Railway. In 1910 its name was changed to the Joplin and Pittsburg Railway.[13] The Joplin and Pittsburg Railway had a unique role in the community it served. In one sense, it was a typical mass transit system. Passengers on the J&P's electric trains included workers going to the mines, students going to the state normal school at Pittsburg, and farmers traveling to various urban centers. However, because of its operation in the Kansas and Missouri coal fields, the J&P Railway also took on a role more similar to that of a steam railway. Often, J&P trains would carry equipment and other freight to mine shafts throughout the community, and then carry coal cars from the mines out to the main lines where they could be picked up by the steam engines of larger railway companies. The J&P also had the job of carrying the overburden from the mines to disposal areas.[14] By 1920, the J&P Railway's passenger service had declined, and its reliance on freight traffic increased.[15]

Clyde Reed, originally a Parsons newspaper editor, had a long political career as governor Allen's personal secretary, Industrial Court Judge, Public Utilities Commission Judge, and Kansas governor (Courtesy of the KSHS).

George H. Wark, state legislature and World War I veteran, was the third judge of the Industrial Court (Courtesy of the KSHS).

This combination of passenger and freight service would prove to be an important point in the conflict between the J&P and some of its employees.

The first employees to bring a case against the J&P Railway were members of the Amalgamated Association of Street and Electric Railway Employees of America, Local 497. This union represented the Motormen, Conductors, and Shop Men who worked for the J&P. It was not particularly surprising that the Amalgamated Association would choose to use the Industrial Court, while many other unions vilified it. The Amalgamated Association had been involved in other cases of arbitration before the Industrial Court came into existence. On December 26, 1918, President Woodrow Wilson had nationalized the country's railroads for the war effort. However, because the J&P was an interurban railway , it escaped government control. As a result, the workers did not have recourse to the Federal Boards of Adjustment established for the nationalized railroads.[16] Instead, the Amalgamated Association and other employees of the J&P utilized the National War Labor Board (NWLB) to settle its disputes. In May 1918, the Amalgamated Association, in conjunction with several other unions working for the J&P, brought a case before the NWLB. The NWLB agreed to increase the wages of trainmen from 35 cents to 42 cents an hour. The Board also gave shop men and barn men a 20% wage increase.[17]

The Amalgamated Association's involvement with the National War Labor Board also led directly to its case in the Industrial Court. The union's agreement with the NWLB took effect on May 24, 1918, and the parties involved had the option of reopening negotiations with the NWLB every six months after February 1, 1919. However, when

the war ended, so did the NWLB. In February 1920, when the Amalgamated Association wanted a wage increase, it looked to the Industrial Court as a surrogate institution. On February 11, 1920, Amalgamated Association, Local 497, sent a complaint to the Industrial Court:

> As the war labor board has ceased to exist and the court of industrial relations is the proper body to take up this question and as we understand has the authority to take up these questions and disputes. The members of this organization have received no increase in wages since May 1918, and are very anxious to have the court of industrial relations make an investigation . . .[18]

The main demand of the Amalgamated Association was that the company give them a pay increase, so the workers could have enough money to live on while the union negotiated a new contract. The Court helped the union in preparing its case. Huggins put the Court's attorney, F. S. Jackson, at the service of the union to help them prepare their case for hearing.[19] However, that assistance did not last, and other problems soon distracted the Court. The Court was not simply handling one case. It was also trying to deal with an investigation of the coal industry, the Edison Company case, and other cases relating to industrial conflicts, as well as hundreds of public utilities cases. As a result, the Court failed to give the Amalgamated Association a quick hearing. In early March, the union's representative, Clyde Davidson, wrote to the Court wanting to know why none of the parties had received any information on the case.[20]

The case was finally set for hearing on April 5 at the county court house in Pittsburg.[21] Once the Amalgamated Association got their hearing, the case moved quickly. The company opposed the Court's involvement on the basis that the company operated an interstate railway, and the Court was outside of its jurisdiction.[22] In spite of

this, the Court readily granted the Amalgamated Association a wage increase based on the average wages paid in Crawford and Cherokee counties.[23] Motormen and conductors were to receive 45 cents for their first three months of service, then they were to receive 48 cents per hour for the next nine months, at which time the company was to pay 51 cents per hour for the next twelve, and finally 55 cents. Shop men were granted wage increases from 45 to 55 cents per hour depending on their job. There were two stipulations to the Court's ruling. First the order was only valid until August 1, 1920, and it only applied to Kansas employees. The order did not apply to those employees of the J&P Railway who were residents of Missouri, as the Court had no jurisdiction beyond Kansas.[24] However, in the interest of equal pay for equal work, the company granted the wage increase to all its employees, not just the Kansans.[25]

In spite of the ease of getting a wage increase, the Amalgamated Association's case was far from over. The main purpose behind the union seeking a wage increase was to provide its members with a living wage while they negotiated a new contract with the J&P. The leadership of the union assumed that the five months the wage increase was good for would be enough time to work out a contract.[26] However, that was not the case. On August 1, the wage order ran out with several points of the contract still unsettled. Once again, the Amalgamated Association went to the Court for help. Initially the union called upon the company to join it in appealing to the Court, but the company was unwilling to cooperate. Apparently, the company felt that it was pointless to sign a contract at all, if the Court of Industrial Relations could abrogate it at will.[27] As a result,

the union filed a formal complaint against the company asking the Court to formally settle the issue.[28]

As in the case of the first hearing, the union wanted a quick resolution, but the Court could not find the time for it. In Crawford County, a great deal of interest developed in the case. J. W. Miley, superintendent of public instruction, wrote to Huggins that "the street car boys are a splendid lot of law abiding, conservative fellows and a speedy investigation of their request will meet with the approval of Crawford County's best citizenship . . ."[29] There was also concern among many people that the members of the Amalgamated Association would be adversely influenced by local miners who still opposed the Court. Union representative Clyde Davidson informed Huggins ". . . there are a great many miners and others doing all they can to discourage the fellows."[30] Other members of the community did their best to encourage the Court to hear the case on the grounds that it would popularize the Court. Milt Gould, the sheriff of Crawford County, informed the Court that the employees of the J&P were the only good union faction in the County, and hearing their case would help increase support for the Court in Crawford county.[31] H. W. Shideeler, publisher of the *Girard Press,* agreed with this view, "if there is any possible way for this case to be set for an early hearing it will not only be a great accommodation to these men, but it will greatly increase the popularity and influence of the Court in this section."[32]

Despite the outpouring of public interest, the case was not heard until October 20.[33] The hearing was conducted by Huggins and Reed. During the hearing the company was represented by its attorney, Clyde Taylor. The union was represented by its

international vice-president, Frank O'Shea. The hearing itself revolved around the testimony of Clyde Davidson and several other union members.[34]

The controversy between the union and the company centered around several clauses that the union wanted in its contract. The first was a clause requiring that all freight trains that had more than three cars would have three men operating them. Customarily, the J&P employed only two men on each train, except in special cases. The second clause the union wanted was that the railway begin operating on an eight-hour day system rather than the nine-hour day system they were using. The union's third demand was another pay increase for all its members.

The fourth and fifth demands involved the treatment of extra train crews. Under the seniority system used by the J&P, the train crews with the most seniority were given regular routes. Once all the routes were filled, the train crews that were left were referred to as "extras." Extra crews could be called upon at anytime to fill in for regular crews, but had no guarantee of getting work. The work that extra crews did get usually did not take longer than one or two hours to complete. This was an inconvenience to the extra crews, since it took up their time getting to and from the job, but did not pay much. The union asked that whenever an extra crew was called upon to work, the crew would be paid for four hours of work, regardless of how short the route was. The union also called upon the company to pay the extra crews for the time spent traveling to and from their work site, since the extra crews did not have steady work. The sixth clause the union wanted stipulated that the contract would only be in effect for a year, but this clause was resolved before the case was heard by the Court. The final demand by the union was that all the

workers in the train shops and train storage barns should be paid time-and-one-half for work on Sunday.[35]

The hearing opened with both sides stating their position. O'Shea restated the demands of the union, and noted that there was some confusion over the issue of three-man freight crews. Apparently, W. A. Satterlee, the J&P's manager, felt that the union's negotiating committee had accepted its unwillingness to institute the policy. However, the committee still demanded the three-man train crews. Company attorney Taylor's position demonstrated a certain hostility towards the Court. Taylor maintained that so long as the Industrial Court functioned, there was no reason to have a contract at all, since the document could be changed. Taylor also denounced the demands of the union. He pointed out that when the first pay increase was granted in March cost of living had increased. However, since the cost of living had (supposedly) dropped, any discussion of wages should revolve around a wage decrease, not an increase. On the issue of three-man train crews, Taylor continued to maintain that the union had agreed to eliminate that demand. He further stated that, the demand ". . . was inequitable and unjust . . . regardless of the necessity of the employment of three-men in handling freight . . ." The J&P, as well as other railways, had always used two-man train crews regardless of the size of the train. On the issue of a shorter work day, he stated that it was impossible to switch to an eight-hour system, because the public's demand for service required the company to operate its trains for 18 hours with two nine-hour shifts. Switching to an eight-hour system, according to Taylor, was simply an attempt by the union to force the company to

pay overtime every day for them to work the extra hours. In fact, Taylor felt that all the union's demands were nothing more than veiled attempts to raise wages.[36]

With opening statements made, the hearing moved onto the testimony of union representative Clyde Davidson. The first issue was that of using three men on large freight trains. According to Davidson, economy, safety, and convenience were the main reasons for using three men on these trains. Davidson's testimony revealed that several years earlier, the company had temporarily used three-man train crews on the line that ran between Pittsburg and Joplin. Davidson felt the reason for using three-man crews was to get the work done faster, so the company would not have to pay the crews as much. By using three-man crews, Davidson maintained, the company could keep costs down by doing work faster and more efficiently.[37]

Davidson also felt that the use of three-man crews on large freight trains would be safer. Handling a large freight train required the train crew to spend a great deal of time switching cars from sidings to the mainline and back again. When switching cars with a two-man crew, the motorman operated the engine, while the conductor worked the switch. As a result, there was no one to watch for other trains operating on the main line. Each train had a red light mounted in the last car to act as a warning, but that light could fail. Although there had been no actual accidents on the J&P lines, there had been many close-calls. A third crew man could stand at the end of the train, while the other two crew men worked, to warn of any oncoming trains.[38]

Davidson also felt that the use of three-man crews would make train operations easier and more efficient. The J&P used electric trains, and each engine got its power

from electrical lines that ran over the track. The engine was connected to those power lines by a "trolley pole." When switching an engine from one line to another, the trolley pole was supposed to switch to the new power line automatically. However, the automatic switching system on the trolley pole often failed. With the conductor on the ground operating the switch, the motorman would have to leave his control station at the front of the engine, go to the back of the engine, and pull a cord that manually switched the trolley pole from one power line to the next. While the motorman was performing that operation, the train was running with no one at the controls. Davidson felt that if there was a third crewman, the motorman and the conductor could safely switch the train, while the third crewman made sure the trolley pole switched electrical lines.[39]

When Taylor cross-examined Davidson, he focused on the issue of convenience, and ignored issues of safety and economy. Taylor forced Davidson to acknowledge that although there was a lot of freight moved on the J&P lines, the company's main business was passenger service. As the main role of the company was passenger service, in Taylor's and the company's view, the issue of three-man crews on large freight trains was a minor point. Taylor further maintained that in situations where the trolley pole failed, the conductor could still run from the switch to the train in time to manually move the trolley pole from one line to the next. Davidson acknowledged that this could be done, but it would take more time and would be a great inconvenience to the conductor. Huggins and Reed apparently saw no clear answer to the disagreement, and encouraged the union and the company to agree that at some point a freight train would be so long that it would require a third crew man. However, the union maintained that any freight

train over three cars long required the extra man. The company conceded that at some point an extra crew man might be needed, but there was no way of determining when that point was. As both sides seemed deadlocked on the issue, the judges decided to move onto the other points of contention.[40]

The next issues dealt with were the guarantee of four hours pay for all extra runs and a guarantee of fair compensation for extra train crews. The heart of both those issues was the fair treatment of the extra crews. The Amalgamated Association felt that the extra crews were penalized, because they did not know from one day to the next if they would have work. An extra crew would report for work at a certain time, and if there was a train that needed to be run, they would take it. However, if there was no work for the extra crew, they would be sent home, and told to report back later. The extra crew could also be called to report for work at anytime day or night without advance notice. Even if there was work for an extra crew, they might have to travel an hour just to get to where the train was. Then the extra crew might work for an hour, and have to travel an hour home. As a result, although the extra crew had spent three hours away from home, they were only paid for one hour of work. The idea behind the four-hour minimum was to guarantee that if any train crew was called upon to do extra work, they would get four hours pay. In conjunction with that system, if an extra crew was called into work, the union asked that they be paid not only for the time they spent working, but also for the time it took for them to get from their homes to the train and back again. The union felt these policies would guarantee that extra crews would get just compensation, in spite of the uncertain nature of their work.[41]

In the company's view that scheme was unacceptable. Taylor stated that the system was harmful to the company, in that they would have to pay workers for time when they were not actually working. When Taylor put this point to Davidson, Davidson replied: "I would say it would just give the men what they are entitled to for the extra work." At that point, Taylor changed his line of questioning. Taylor pointed out that the system proposed by the Amalgamated Association would encourage the company not to use extra crews even if they were needed. Taylor also felt the regular crews would start trying to take extra work just to get the money, but Davidson stated that most regular crews did not have the time to take extra work. Taylor concluded his cross-examination by pointing out the fact that no other railway company used a similar system. At that point, Huggins, in an attempt to find a compromise, asked if it was possible for the extra crews to take on a second job to augment their unsteady pay from the J&P. However, Davidson pointed out that since the extra crews had to be ready to go at a moment's notice they could not take a second job.[42]

Once again left with no clear answer, the Court turned to the issue of an eight-hour day for regular train crews. Under the regular system the J&P's trains operated 18 hours a day, and were run by two shifts of crews each working nine hours. The Amalgamated Association felt that an eight-hour day could be instituted by having regular crews work from 5:30am to 1:30pm. Then, the extra crews would take over and work for two hours, and then the second shift of regular crews would work from 3:30pm to 11:30pm. The company's main objection to this was that they would have to hire more extra crews so that there would be enough to work all the rail routes for two hours every

day and still have enough to work when extra service was required. Huggins then voiced the Court's general attitude toward changing hours. An eight-hour day was preferable, but not when it cost the public too much. He went on to justify that position by saying:

> There are some avocations in life where the work is light, where they work under protection from the weather, where the physical strain isn't severe, and where the mental strain isn't sever, that probably a nine hour day is not out of place. When you go beyond the nine hour day you get [to] where you are liable to encroach upon his [the laborer] social rights [but] this class of work . . . is not a class of work that is extremely wearing upon a man's physical nature . . .[43]

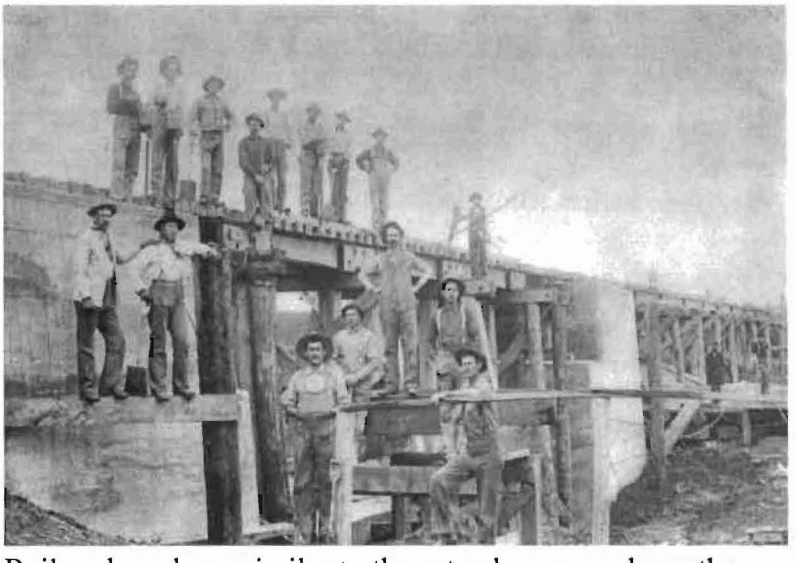
Despite its indecision during the hearing, the Court's order, issued on December 9 indicated a decided favoritism towards the J&P Railway Company. The Amalgamated Association gained few concessions from the Court in their contract dispute. The Court found that although there had been a rise in the cost of some commodities, it did not justify a wage increase. On the issue of using three-man train crews on long freight trains, the Court felt that this would penalize the company unnecessarily, and further stated that it ". . . would ultimately be reflected in lower wages to the men, or poorer service to the public." The Court also denied the request that shop men and barn men be paid time and a half for working on Sundays and holidays. Although the Court felt that it was inadvisable to have men working on Sundays and holidays, in the case of the J&P it was necessary, and thus they should not have to pay extra for their workers. The issue of an eight-hour day was disregarded by the Court. Huggins reiterated the view that "no arbitrary rule can be fixed as to the length of a working day." As a result, the nine-hour day was maintained, because it would cost the company less and thus benefit the public. The Court did not even mention paying extra crews for the time it took for them to get to

their work and back. In fact, the only demand that the Court allowed the Amalgamated Association was paying all extra crews for four hours of service regardless of the time needed to complete the work.[44]

The Industrial Court's order in the case of the Amalgamated Association's contract dispute did not end the union's conflict with the J&P. In May, months before the union filed its second complaint, the Amalgamated Association had come into conflict over the interpretation of the first wage increase. The order granting them the wage increase was issued after the April 5 hearing. The J&P began paying the increased wage at that point. However, the Amalgamated Association felt that they should receive back wages from the time they filed their complaint with the Court. The company, on the other hand, felt that if the Court had intended them to pay back wages, they would have said so.[45]

The basis for the Amalgamated Association's claim was section 23 of the Court of Industrial Relations Act. Under that section, it was declared that any wage increase was to be deemed fair wage in the legal sense, and those receiving the wage increase could demand back wages from the time the complaint was filed.[46] Initially, the union went to the Industrial Court to force the company to pay them back wages.[47] However, Huggins pointed out to the Amalgamated Association's representatives that although section 23 did give them a right to back wages, the Industrial Court did not have constitutional authority to make its orders retroactive. Huggins told the union that they would have to take up the matter of back wages with the Crawford County Court, as it was the Court with jurisdiction. Huggins cautioned the union that the company had granted the wage

The main office of the Topeka Railway Company. In 1920 the employees of the Topeka Railway Company brought a case before the Industrial Court for increased wages (Courtesy of the KSHS).



Railroad workers, similar to these trackmen, made up the majority of the cases brought before the Industrial Court (Courtesy of KSHS).

increase to both Kansas and Missouri employees, even thought the order did not require it. If the union took the case for back wages to court and won, the Kansas employees would be the only ones to get them. Huggins warned that such an action might cause tension within the union.[48]

In spite of this, after the settlement of the contract, the Amalgamated Association sued the J&P Railway for back wages. The case started out in the Court at Pittsburg, but the company used the fact that they were an interstate company to get the case moved to the Federal Court in Kansas City.[49] This created a problem for the Court of Industrial Relations. The Industrial Court heard from Kansas state senator, F. Dumont Smith, that the reason for the J&P Railway wanting the case to be moved to a federal Court was that the company intended ". . . to raise the entire question."[50] The members of the Court and the governor interpreted that cryptic answer to mean that the J&P was going to challenge the constitutionality of the Industrial Court. The idea that the Industrial Court might be challenged on the basis of its constitutionality was of such concern that Henry Allen, although he had no real authority over the Industrial Court, called upon it to offer its support either to the Federal Court itself or to the Amalgamated Association.[51] The issue of the Industrial Court's constitutionality had been raised before by Alexander Howat and the miners of Kansas and had been upheld. However that case, which will be discussed later, was poorly presented and had been heard by the Kansas State Supreme Court, which was in favor of the Industrial Court. Soon the Kansas Court of Industrial Relations' concern came to the attention of the J&P Railway, and Clyde Taylor attempted to waylay the Court's fears about the case. On April 2, 1921, over a year after the

Amalgamated Association's first complaint, Clyde Taylor wrote to F. S. Jackson, and informed him that "it is not my intention to attack the constitutionality or validity of the scheme of the law nor its details." Taylor went on to state that the company's intention was, in fact, to uphold the order of the Industrial Court when they paid the increased wage from the date the order was issued. He also pointed out:

> . . . it seems to me to be an anomaly for the Counsel of the Court to appear in the Federal Court in opposition to an order that was made by the Court. Rather it is his business to support the order as made, and that is exactly what we are trying to do and exactly the contrary to what the plaintiffs are attempting . . .[52]

It is impossible to tell whether Taylor really did intend to challenge the Court's constitutionality and changed his tactics when the Industrial Court threw its support behind the Amalgamated Association, or if F. Dumont Smith and the Court simply misinterpreted the intentions of the company from the beginning. In any event, the Industrial Court's interest in the Amalgamated Association's federal case, which the union eventually lost, abruptly ended after Taylor's letter.

Although the Amalgamated Association, in the end, did not get the best results from its involvement with the Industrial Court, its cases served to popularize the Court among several other groups of laborers working for the J&P. Even before the Amalgamated Association had its first hearing before the Court in April 1920, other J&P employees, not represented by the Amalgamated Association, became interested in the possible gains to be made through the Court. The first of these cases was brought by the Trackmen's Union local 14257, who wrote to the Court asking for a wage increase. In the same letter the union gave its reasons for demanding the increase. Its first reason was that

the J&P Railway had increased the cost of passenger and freight service, and the union felt that it deserved a share of the increase. The union further maintained that they were working nine hour days for 42 cents per hour, which was not a fair wage for their class of labor. The union felt it deserved an increase of its wage not only because of the skill required for the job, but also because they were Americans and not immigrants.[53] The Trackmen filed their complaint early enough that Huggins suggested they join the Amalgamated Association's case.[54] However, for one reason or another, the Trackmen chose to present their case separate from the Amalgamated Association.

The case of the Trackmen's Union was far less complicated than the case of the Amalgamated Association. The trackmen maintained that they were doing work far above the skill level of trackmen on other railways. In their original complaint the trackmen had pointed to the fact that the work they did required far more skill than simply lining tracks with ballast. The trackmen of the J&P Railway also had ". . . to do bridge work, make concrete abutments, and lay brick, and do other forms of labor not in common with section men on steam railways."[55] The Industrial Court apparently agreed with the trackmens' assessment of their skills. The order issued by the Industrial Court on July 21, stated that "the evidence shows that the members of said trackmen's union are all Americans and that they are high class trackmen preforming good service for the respondent [the J&P Railway] and are men of intelligence in their line of work." However, the order also acknowledged that the trackmen of the J&P Railway at the time were being paid more than trackmen on other railways, but due to their fidelity they

deserved a wage increase. As a result, the Court granted them a wage increase of three cents.[56]

The linemen, the workers charged with caring for the railway's electrical system, also brought a case before the Court. Again the main demands of the employees were for an increased wage. Unfortunately, the linemen's case, like that of their fellow workers in the Amalgamated Association, was hampered by delay. The cases the Court was dealing with were piling up. The Court had intended to send out questionnaires for the linemen to fill out, in the hope of getting useful evidence. However, the accounting department was so busy with other matters that they were unable to print out new questionnaires. Instead, the Court sent the linemen questionnaires that were left over from another case. The Court simply marked out the names of the original complainant and respondent, and wrote in the names of the linemen and the J&P Railway. Once the representatives of the linemen got the questionnaires, they had to distribute them to the other linemen as quickly as possible. The Court mailed out the questionnaires on May 27 and scheduled the hearing on the matter for June 15. As a result, the linemen had a little over two weeks to receive the questionnaires, distribute them, have them filled out, and mail them back to the Court. The Court tried to lighten its load by using much of the evidence from the Amalgamated Association's case in the linemen's case.[57]

In the hearing, Clyde Taylor, again representing the company, maintained that the linemen did not deserve an increased wage because their work was not particularly difficult. Taylor pointed to the fact that the linemen did not have to work with the high tension electrical lines that provided electricity for the trains. The J&P purchased its

electricity from a company that cared for the high tension electrical lines itself. The J&P linemen were only responsible for the electrical equipment on the rail lines. The linemen also received other compensation beyond wages. The linemen of the J&P Railway, and their families, were granted free transportation. Notwithstanding Taylor's evidence, the Court ruled in the linemen's favor.[58] The Court found that the linemen's wages were too low. Second class linemen were to receive a wage of 50 cents per hour. First class linemen were to receive 62 cents per hour.[59]

In spite of the successes of the trackmen and linemen cases, the Court was not simply willing to hand out wage increases to every group of employees that came before it. The dispatchers and substation operators of the J&P Railway also attempted to capitalize on the successes of their fellow employees. The main point of the dispatchers' case was the disparity of the wages between them and dispatchers on steam railways. Dispatchers on steam railways received between $225 and $350 per month for working an eight-hour day. The dispatchers of the J&P received $160 per month for a nine-hour day. However, their wage demands were rejected by the Court. Clyde Taylor successfully demonstrated that there were major differences between dispatchers on steam railroads and dispatchers on the J&P. The major difference was that to be a dispatcher on a steam railway one had to be an excellent telegraph operator. It took approximately six years to train a dispatcher on a steam railway. Conversely, Taylor compared the duties of the J&P dispatchers with telephone operators. Since the J&P dispatchers used phones and were not required to be telegraph operators they could be trained for the job in two months.[60] As a result, their wage demands were denied.[61]

The substation operators met with similar results in their case for increased wages. Taylor presented a case that primarily focused on the ease of their job. The circuit breakers that controlled the flow of electricity to the trains were housed in substations along the rail lines. The job of the substation operators had at one time been a skilled one, but the introduction of automated circuit breakers had simplified the job considerably. Taylor stated that substation operators were essentially paid to set in the substation and do nothing. The only work the substation operators did was to make sure that circuit breakers did not become dislodged. A great deal was made of the fact that the substation operators often had their wives perform their duties when they wanted a break. Taylor further built on his case by using the substation operator's strike history to turn the Court against them. In July 1917, the substation operators had apparently been involved in a sympathetic strike in support of trainmen. Their involvement in the strike violated an injunction against their striking.[62] As a result, the substation operators' demands for higher wages were also denied.[63]

The last case brought by employees of the J&P Railway in 1920 was the case brought by the track foremen. This case is unique because it was the only case in which management level employees by themselves brought a case before the Industrial Court. The track foremen were also demanding an increased wage. In countering this demand, Clyde Taylor focused on the Court's jurisdiction. He stated that one of the foremen who signed the complaint, Joe Trahn, was a resident of Missouri and thus was beyond the jurisdiction of the Court. Taylor further stated that "the wage for uniform service necessarily is a uniform pay . . ." As a result, all the foremen should not receive a wage

increase, because Joe Trahn could not receive one.[64] In spite of this, the Court granted the foremen a salary of $115 per month.[65]

However, this settlement was not satisfactory for the foremen. In October the foremen filed another complaint against the J&P. The main point of the new complaint was that track foremen of steam railways received a salary of $130 per month. "Considering the amount of work we do we believe we are entitled to more than steam line foremen . . ."[66] Once again though, the Court found itself too busy to deal with the foremen's case. The foremen brought the case at the end of the year when the Court was facing the possibility of being reorganized.[67] Huggins wrote to J. E. Duggan, the representative of the track foremen, "I am considerably concerned about the delay which has occurred, but as it is a small case and only a few interested in it . . . we ought to hear it some time when we are down in your neighborhood on some other matter." Huggins went on to say that the only other way the foremen could get a faster hearing would be to come to Topeka, otherwise there was no telling when their case would be heard.[68] The foremen opted to wait, but when the Court finally did go to Pittsburg for another hearing, in February 1921, it did not have time to hear the foremen's case.[69] In the end, the track foremen found it more expedient to come to an agreement with the company without the help of the Industrial Court, and the case was dismissed.[70]

Although a lot of time was taken up by their cases, the employees of the J&P Railway were not the only people to bring cases before the Court of Industrial Relations. Many cases were brought by the employees of other railway companies who were also experienced with federal labor arbitration. Even as the Court worked through the various

cases against the J&P two cases were brought by other locals of the Amalgamated Association of Street and Electric Railway Employees of America. The first of these cases was presented by John Zinn, the president and representative of local 797 of the Amalgamated Association.[71] Local 797's members were employed by the Topeka Railway Company, which provided street car service for Topeka. The case was a fairly simple one involving a wage increase; however, the company's answer to the complaint was unique. Besides denying that their workers' wages were unfair, the company claimed that if the Court found in favor of the Amalgamated Association, the company should have the right to raise its rates. This was based on a section of the Industrial Relations Act which stated that a company had a right to a fair return for its services.[72]

The Topeka Railway Company's request for a rate increase, if the Amalgamated Association was granted a wage increase, changed the complexion of the case. The requested rate increase had the effect of directly implicating the public. The public was theoretically always involved in Industrial Court cases, since the Court's purpose was to protect their interests. However, with the exception of public utilities cases, the public's involvement with the Court was nominal. By bringing up the issue of rates, the Topeka Railway Company was able to implicate the City of Topeka in the case. As a result, Topeka mayor, Herbert Corwine, and the City Attorney were called upon to present their case before the Court.[73]

The issue of rates and the involvement of the mayor caused the citizens of Topeka to take a direct interest in the case. For many, the service that had been provided by the Topeka Railway Company was of very poor quality. With the involvement of the city, the

residents of Topeka began sending complaints about the service to the Industrial Court. Ninety individuals living in south Topeka signed a petition to the Court ". . . to respectfully call the attention of your Honorable Body to the very unsatisfactory, inadequate, and irregular service . . ." of the railroad. Besides using inferior equipment on the line that serviced south Topeka, the petition also complained of railway's lack of punctuality.

> . . . during the hours of the day when service should be the best, it is most unsatisfactory and inadequate. In bad weather, and during the morning hours when its patrons should enjoy not less than the established 20 minute service, the company will divert one car to the Oakland Line, or some other, and leave this line with but a 40 minute service. Patrons living beyond the end of the line will leave their homes depending upon the regular 20 minute service to get them to their work, but upon arriving at the car line and finding no car leaving at the regular time are obliged to wait for a later car . . .[74]

The Court also received complaints from other parts of the city. In the case of the streetcar stop across from the Santa Fe train depot, the situation was the opposite of that experienced by the residents of south Topeka:

> Another feature in connection with the service to the railroad station is the promptness with which the cars start when passenger begin to unload from the train. If the street car crew can get by the station and start moving before passengers can come from a train and through the station, it seems to be their object to do so.[75]

The Court took action on the issue of poor service. Carl Moore, the secretary of the Industrial Court, wrote to A. M. Patten, superintendent of the Topeka Railway Company, informing him of the complaints the Court had received. He further informed Patten that "if we do not hear from you within a reasonable time we will be compelled to set the matter for an early hearing."[76] Clyde Reed also informed the *Topeka Daily Capital*

that the Court would make sure the Topeka Railway Company complied with the Court's wishes by periodically reviewing the case.[77] There is no specific evidence that Patton took any action on the complaints. However, the Court made no mention of specific issues of poor service in its hearing on the Amalgamated Association's case, or at any time after the case, so it may be assumed that something was done about the complaints.

The main task of the Industrial Court in the Amalgamated Association's Topeka case was to find a balance between acceding to the union's wage demands and maintaining reasonable car fares for the public. The Court readily acknowledged the fact that the Amalgamated Association deserved a wage increase, and that such a raise would result in a rate increase for the public. However, the Court sought to keep the rate increase as low as possible. One way of doing this was to make the Topeka Railway's operation more efficient. The Court suggested the possibility of discontinuing service on rail lines that had low usage. The company was apparently in favor of this course of action. Under their franchise to provide Topeka with public transportation, the Topeka Railway Company could not discontinue a route without accepting a fine.[78] Having the conditions of the franchise overruled, so they could provide more efficient service, was in the company's best interest. However, Superintendent Patten acknowledged it would not eliminate the need to raise rates. The city government took a different view. Although the city wanted efficient service, they did not want it at the expense of leaving portions of the population without public transportation. Mayor Corwine stated that a trial abandonment would be advisable, but that "it should be understood that a permanent abandonment of

any of the lines of Topeka does not at this time meet with [the City Commission's] approval."[79]

The Court issued its order in the case on August 7. The order granted the members of Local 797 a wage increase very similar to the one granted to the Amalgamated Association members in the J&P case in April. The order also raised rates from six cents, which had been the rate since June 1919, to eight cents for a single fare. Finally, the order closed several lines including the 8th street line and the line to the fairground.[80] However, only Huggins and Wark signed the order. The order in the streetcar case had come four months before the November elections. Reed was afraid that instituting a rate increase would adversely affect the governor's campaign. Reed, who gained his position on the Court through his loyalty to the governor, asked Huggins and Wark to grant the wage increase, but delay the rate increase until after the election. However, the other Judges refused, and the order was issued without Reed's signature.[81]

In spite of Reed's concerns, the citizens of Topeka seemed to accept the rate increase without complaint, but the Court's selection of rail lines to be discontinued sparked controversy. The main point of contention was the closing of the 8th street line. Soon after the issuing of the order, residents living in and around 8th street began complaining to the Mayor and directly to the Industrial Court. At the end of October, the Mayor was informed that the Topeka Railway Company was removing the 8th street "Y", the combination of rail sidings specifically to allow trains to turn around. The city interpreted this to mean that the company was permanently abandoning the line.[82] Huggins tried to placate the mayor's concerns by telling him that the order did not allow

them to permanently abandon the line. If service was required on 8th street, the company would use "two-end cars," street cars with operating stations at either end that allow them to run forwards or backwards.[83] Some irate citizens wrote directly to the Court. One property owner living on eighth street wrote to the Court that,

> your Honorable body has not seemed to consider us in the controversy between the Railway company and its employees. We (the public) should have our rights protected by you. The franchise granted by the City of Topeka to the Street Railway Company, calls for heavy damages for failure to operate any of its lines; why should your Honorable body attempt to deprive us of our rights by setting aside this contract?[84]

In spite of such complaints the Court allowed its order to stand.

There was another case being handled in conjunction with the Topeka Railway case. This case was brought by E. H. Vandenburg, president of the Amalgamated Association's Local 794, which represented the motormen and conductors of the Wichita Railroad and Light Company. The Wichita Railroad and Light Company provided the streetcar service for Wichita, and was owned by the Illinois Traction System Company the parent company of the Topeka Railway Company.[85] The case was virtually identical to the Topeka case, and Local 794 requested a wage increase.[86] The Wichita Railroad and Light Company submitted an answer to the complaint denying the need for an increased wage, but stating if it was granted that rates would have to be increased.[87] The Court granted the wage increase and the rate increase as in the Topeka Railway case.[88] However, in this case, there appeared to be little interest taken by the public. In fact the major issue resulting from the case was the nature of the ruling.

There appeared to be some confusion over the exact nature of the wage increase granted by the Court. In early August, Huggins received a letter from Vandenburg describing the dissatisfaction among the union members over the results of their case. "The majority of them [the union members] were in favor of some radical action, but with considerable difficulty I have succeeded in keeping them under control . . ." The first issue was the union's inability to get the back wages they felt the Industrial Court Act guaranteed them. To this Huggins gave the same explanation he had given the Amalgamated Association in the J&P case. The second concern was the wages themselves. According to the wage increases issued by the Court, trainmen received 42 cents per hour for the first six months of service, 44 cents per hour for the second six months of service, and 46 cents per hour for the third six months of service. However, car cleaners, sweepers, oilers, and pitmen received 45 cents per hour from the beginning. The trainmen, who considered themselves skilled workers, took it as an insult that they had to work for over a year to earn as much as a car cleaner or other unskilled laborer. There was also the feeling that all skilled shop laborers, who received 45 cents per hour unless they had a trade, should receive a wage of sixty cents per hour even if they did not have a specific trade such as welder or armature winder. Vandenburg suggested that a meeting be set up between the union and the company to work out the differences[89]

Huggins' reaction to the letter was a combination of mystification and irritation. Huggins, although well versed in the legal aspects of labor relations, had little understanding of the social implications of labor. Huggins, like many others, had a tendency to view the working class as a homogeneous group. He acknowledged the fact

that skill level, as well as the amount of work required by a job, had implications in how much a worker should get paid, but he did not understand the status that went along with those wages. When confronted with the trainmen's complaint, Huggins viewed it as being petty. In replying to Vandenburg, Huggins noted that "the big question to be determined in your case, of course, was your right to an increase . . ." not what that increase should be. Huggins also exhibited a rather paternalistic attitude in dealing with the union. Huggins stated that "I cannot understand why any who has received the consideration from this court that your men have should talk about taking radical action." In addressing the complaints themselves, Huggins agreed with Vandenburg's suggestion of a meeting between the two parties. However, on the issue of the wages given to trainmen as apposed to common laborers, Huggins thought that the wage for trainmen in the first six months was 45 cents per hour and increased from there.[90] As it turned out, there had been an error in the order issued by the Court. Huggins had intended for the wage of trainmen to start at 45 cents, but for some reason the order stated that it started at 42 cents. However, because the order had been issued, it could not simply be changed. Another hearing would have to be held.[91] Due to the amount of work the Court had, a new order could not be issued until December.[92]

While that process was taking place, other problems began to emerge for the Amalgamated Association in Wichita. One of the stipulations of the Court's order was that the company would contribute $20 toward the purchase of uniforms for the trainmen. However, in early February 1921, the company refused to pay for the uniforms, a clear violation of its contract. Another violation of the contract occurred when a street car

collided with an automobile. According to policy, the motorman was suspended pending the investigation. The investigation cleared him, but he did not receive pay for the time he was suspended as was stipulated in the contract. The company, when questioned on its behavior by the union, claimed that in making a complaint to the Industrial Court the contract was null and void. The railroad's superintendent, A. H. Patten, who was also superintendent of the Topeka Railway Company, cautioned the union ". . . that the company had been very considerate to the men, and that if they started anything the company would defend itself."[93] F. S. Jackson maintained, however, that the Court's ruling in no way invalidated the contract.[94] Then the company made a complaint to the Court asking for a wage reduction.[95] The Court, who was aware of the company's previous violations of the Court's orders, maintained its original order and laid down specific rules governing the conduct between the company and its employees. The first of these rules specified that the company was required to abide by its contracts even if they were altered by the Court. The rest of the rules covered a wide variety of issues from policies for dealing with absent workers to the style of summer uniforms. Several rules reaffirmed the authority of the Amalgamated Association to act as representatives of the workers.[96] That arrangement was very satisfactory to the Amalgamated Association. In fact, the order was so satisfactory that the next year, when the union could not come to a contract agreement with the company, it asked for, and was granted, an extension of the order.[97]

Streetcar unions were not the only railroad unions to take advantage of the Court. Other railway laborers also looked to the Industrial Court for assistance. In March, a

combination of four local unions of the International Brotherhood of Stationary Firemen and Oilers brought a case against nine separate railroads operating within Kansas. Stationary firemen and oilers, as the names suggest, were responsible for the care and maintenance of stationary steam engines. Stationary firemen and oilers working for the railroads operated the steam engines that provided power to the shops and roundhouses. The union also encompassed many of the other workers in railroad shops and storage barns. Stationary Firemen and Oilers were not isolated to railroad employees. They also had responsibility for operating the steam engines that provided virtually all the power and water service for cities.[98]

As in most of the cases heard by the Industrial Court up to that point, the case of the Stationary Firemen and Oilers had at its heart a demand for higher wages. There were also demands for the establishment of an eight-hour day and for time and a half for working on Sundays and holidays. The union stated that the "respondents [the railroads] have failed, neglected, and refused, and still refuse, to make a settlement of the controversy . . . " As a result, the members of the union had for a period of thirty days been receiving an unfair wage. All in all a fairly typical complaint. In fact, the only unique aspect of the complaint was that it named in great detail all the various occupations held by the different members of the union employed by the railroad companies, from actual stationary firemen to headlamp cleaners.[99]

In spite of its straightforward nature, the case of the Stationary Firemen and Oilers became more complex. In the first place, the case was being brought against nine separate railway companies. This created many logistical problems for the already

overloaded Court. When the Court issued its usual questionnaires, it discovered that it did not give the companies enough time to respond. In most of its cases, the Court had dealt with companies based in Kansas, and thus could rely on them to act promptly. However, most of the railroad companies were not headquartered in the state. R. W. Blair, attorney for the Union Pacific Railway in Kansas, informed the Court that he had sent the questionnaire to Omaha for an answer and had yet to receive it back.[100] Luther Burns, of the Chicago, Rock Island, and Pacific Railroad, had similar results when he sent his questionnaire to Chicago.[101] As a result, the railroad companies demanded, and received, an extension in the time that it took to answer.[102]

There was also some confusion as to what companies the complaint was against. D. W. Eaton wrote the Court that the Kansas City, Mexico and Orient Railway ". . . has not operated any railroad in Kansas since 1912 . . ."[103] As it turned out though, the Kansas City, Mexico and Orient Railway Company did have railroad lines in Kansas, but they were under the control of a receiver. F. S. Jackson informed the company that in spite of the receivership, they would still have to take part in the case.[104] The Midland Valley Railroad informed the Court that although it did have lines in Kansas, it did not employ any stationary firemen or oilers in Kansas.[105] However, this did not help them to avoid the case. Many other shop and barn workers belonged to the Stationary Firemen and Oilers Union besides stationary firemen and oilers, so the Midland Valley Railroad still employed members of that union.

There was also an issue of the Industrial Court's jurisdiction over interstate companies. The railway companies maintained that the Industrial Court lacked

jurisdiction because they were involved in interstate commerce. A similar problem had arisen in the cases of the Joplin and Pittsburg Railway Company. In those cases the Court had simply limited the orders it issued to residents of Kansas. Similarly, the Court maintained jurisdiction over the case, because all the union members making the complaint were residents of Kansas.[106]

Another problem with the case was conflicting jurisdiction, which stemmed from federal control of railroads during World War I. When the war ended, railroad companies clamored to have control of their railroads returned to them. However, there were concerns that after being under Federal control for so long, the railroad companies might take advantage of the public if they were released completely from government control. To prevent the railroad companies from running amuck, Congress passed the *Transportation Act of 1920*, which railway companies had to agree to before their railroads would be released from government control. Besides laying out restrictions on rate increases, the combination of railroad companies, and the issuing of company securities, the act also created a labor board to oversee all conflicts between railroad management and employees. The railroad companies agreed to those regulations, and the railroads reverted to private ownership in February 1920.[107]

In bringing their case to the Court of Industrial Relations, the Stationary Firemen and Oilers, who were employees of the railroads, created a jurisdictional conflict between the state and federal agencies. The railroad companies quickly exploited that jurisdictional issue as a means of countering the union's demands. In issuing their individual answers to the complaint of the Stationary Firemen and Oilers Union, every

railway company pointed to the jurisdictional conflict between the Industrial Court and the *Transportation Act.* The companies further pointed out that a similar case on the issue of wages was pending before the labor board established by the act. The issue of conflicting jurisdiction was important enough to the Court that it decided to issue a separate opinion on the issue. In that opinion the Court maintained that it could rule on the case. The basis for that decision argued that although the *Transportation Act* did have jurisdiction, the Labor Board that the employees were supposed to take their complaints to had not been established in March when the union made its complaint to the Industrial Court. The Court also questioned the power of the Labor Board as it had no ability to enforce its rulings. The Court stated that if it issued an order in the case and the Labor Board issued an order, the union could choose between the two orders.[108]

The Court issued its order June 15, and granted the Stationary Firemen and Oilers Union all of their demands. The Court set wages at between 45 cents per hour and 60 cents per hour depending on the type of work being done. The Court also granted the employees an eight-hour day and time-and-a-half for work on Sundays and holidays.[109] The Court's willingness to give the Stationary Firemen and Oilers Union an eight-hour day and overtime pay, when it denied it to the Amalgamated Association, is related partially to the size of the companies and to the nature of the work. In denying overtime pay to shop men and barn men on the J&P Railway the Court noted that a larger company could absorb the extra cost, but not a company the size of the J&P.[110] The railroads involved in the Stationary Firemen and Oilers case were much larger, and, according to the Court, able to absorb the extra cost. In granting the Stationary Firemen and Oilers

Union an eight-hour day the Court noted that their work was clearly very difficult, as opposed to the work of the motormen and conductors of the J&P. Also, it was much easier to establish an eight-hour day, because the work of the Stationary Firemen was not directly linked to public service, as was the case of the Amalgamated Association. The members of the Stationary Firemen and Oilers Union worked in the railroads' shops and barns. Because of this, if they worked fewer hours a day it is unlikely it would have affected the public's service. However, having the J&P's motormen and conductors work eight-hour days would have created the possibility of depriving the public of service for two hours every day.

The railroad companies were quick to challenge the Industrial Court's ruling. The companies took their case to the Kansas Supreme Court. Once again they challenged the Industrial Court's jurisdiction due to the existence of the *Transportation Act* and that the companies were involved in interstate commerce.[111] Although the Industrial Court was willing to participate in the Supreme Court case, it urged the union to take an alternate route. The Federal Labor Board had finished its deliberations on the issue of the wage increase for the Stationary Firemen and Oilers Union on a national level, and had granted them a wage increase. That increase was greater than the one issued by the Industrial Court. Attorney General Hopkins, whose job it was to enforce the Industrial Court law, recommended that they take the federal wage increase, as it was larger, and would take affect quicker, because it was not being contested by the railroads.[112]

The choice to continue the case to uphold the Industrial Court's order or to accept the order of the Federal Labor Board, caused some indecision in the Stationary Firemen

and Oilers Union. Although the federal award gave them a higher wage, the Industrial Court's order gave them an eight-hour day and overtime. As one union member put it: "we want the same as other crafts are getting [and] it is causing a great deal of uneasiness here . . ."[113] As a result, the union was not quick to make a decision. This aggravated the Industrial Court, which had to decide whether or not it was going to have to defend itself before the Kansas Supreme Court. Huggins in a letter to the union's representatives stated that "it is my belief that . . . you had better dismiss your action [in the supreme court] because you can't take both awards." He also tried to placate the union's concerns by telling them they could file another complaint with the Industrial Court over the issue of the eight-hour day and overtime.[114] Huggins did not have very high hopes for the possibility of upholding the Industrial Court's ruling in the Kansas Supreme Court. As he told another railroad laborer, "we are up against some pretty hard legal propositions . . ." as far as the jurisdiction of the Court was concerned.[115] In the end, the union chose to take the federal award.[116] However, they never made an attempt to enter a complaint with the Court of Industrial Relations to get an eight-hour day and overtime.

Another case brought before the Court in 1920 could also trace its origins back to federal control of the railroads during the war. In 1919, the Chicago, Rock Island and Pacific Railway had several shops at Goodland in western Kansas. Several of those shops were little more than a roof supported by four poles. The lack of walls resulted in shop employees working during the summer months, but then being laid off during the winter. This was a violation of the state's labor laws even before the establishment of the Industrial Court .[117] Sixty-four of the workers sent a complaint to J. H. Crawford, State

Commissioner of Labor, demanding that walls be put on the shops, allowing them to work year round.[118] Crawford conferred with the Rock Island's attorney in Topeka, and received assurances that the matter would be taken care of.[119] The federal manager and the company representatives came to a verbal agreement that the company would supply the funds to put walls on the shed. However, when the federal manager investigated the case further, it was decided that the building should also be enlarged. When the he submitted the necessary forms, the corporate officials refused to pay for it. An agreement was then reached that money would be set aside for the work in 1920.[120] When the workers asked for a quicker resolution, Crawford informed them that there was nothing he could do. "You know as well as I that the railroads are in the hands of the Federal Administration, and that it is impossible for the state to force the Federal government to enclose your sheds . . ."[121] However, when control of the railroad reverted back to the company in the postwar period, the company still did not complete the work in spite of the pleadings of both the workers and Crawford.[122]

In the summer of 1920 the workers took their case to the Industrial Court. The workers' demands were simply that the company complete the work on the shop building as they had said they would. The company attempted to have the case put off, but the Court was unwilling to do this on the grounds that there had already been too much delay.[123] After the hearing, the Court readily granted the workers demands, and the shops were enclosed.[124] After having their demands ignored for so long, the workers decided to get as much out of the Court as they could while it was assisting them. The Court began receiving letters demanding better lighting, ventilation, heating, and repairs to the leaky

roofs.[125] Another motivation for the extra demands was the fact that the round house and machine shops at Goodland had steam heat, and the workers in the other shops wanted the same.[126] However, there were limits to how far the Court would go on behalf of labor, and in May 1921 the case was declared closed without meeting any of the workers further demands.[127]

Although railroad workers made up the largest percentage of workers bringing cases before the Industrial Court in 1920, workers in other industries also used it. In the June 1920, a group of non-union workers brought a case against the Atchison Railway, Light, and Power Company (ARLP). This company provided a wide variety of services for the city of Atchison, including streetcar service, electricity, and gas. The workers in question were responsible for running the steam engine that powered the electric plant. These workers' complaint was the standard request for a wage increase. The ARLP's answer to this complaint followed the lead of the Topeka and Wichita streetcar companies in that it denied the need for wage increase, but demanded a rate increase, if a wage increase were to be granted.[128]

The hearing in the case was held at Topeka and overseen by Judge Reed, who questioned the witnesses directly. The witnesses were Elmer and Ralph Sowers, watch engineers for the company, who were chosen to represent the workers. The questioning itself focused on the type of work done and the conditions under which it was done. The watch engineer was the individual directly responsible for the operation of the steam engine that powered the generators, which produced the city's electricity. There was a chief engineer, but his role was supervisory, and he did not actually operate the steam

engine. The work of the watch engineer, as well as the firemen, oilers, repairmen, and coal passers was fairly arduous. The workers had an eight hour shift, with the exception of the watch engineer, who might work longer. They worked seven days a week without a regular day off and no paid vacations. The work itself was also dangerous. Besides being responsible for the steam engines, the workers were also responsible for operating the generators. In working with both steam and electricity, their jobs were dangerous enough to make it virtually impossible for them to get life insurance or accident insurance. Besides the danger of the work, the main problem with working conditions, according to Ralph Sowers, was the lavatory. The lavatory was located behind the boiler room, and was constantly filled with ashes and smoke.[129]

In his cross examination the company attorney focused on the workers skill levels and on refuting the issue of poor conditions. The attorney pointed to the fact that the watch engineer, although he conducted the day-to-day operation of the steam engine, was not responsible for the steam engine overall. Full responsibility for the company's steam engine lay in the hands of the chief engineer. The attorney also noted that the watch engineers had no special training to operate a steam engine, but had simply worked their way up from firemen. As far as the company was concerned, this lack of skill mitigated against a wage increase. On the issue of working conditions, the company attorney suggested that the workers clean their own lavatory rather than let it fill up with ashes. The attorney also pointed to the fact that the company was in the process of renovating the building, and implied that this would correct the issue of poor working conditions. The company also tried to convince the Court that their wages were on the same level as

those of the companies in the Atchison area. Prior to the hearing, the company managers sent out letters to several cold storage companies that used steam engines for power, to determine their wages, and submitted their responses as evidence that the ARLP company was paying a fair wage.[130]

The city of Atchison also played a role in the case. As in the cases of the Topeka and Wichita streetcar companies, a city representative was called upon to be present at the case against the ARLP.[131] However, unlike the other two cases involving city government, Atchison's city attorney, W. E. Clausen, took a more proactive role in the case. Between the testimony of the two workers, Clausen interrupted the proceedings demanding that the request for a wage increase and for a rate increase be handled in separate cases. Clausen felt that the issue of a rate increase depended on whether or not the Court granted the wage increase, and there was no point in dealing with the rate increase until after an order was issued either granting or denying the wage increase. The company attorney did not agree. "I wish to state in the records for the information of the attorney for the city that the amount or rate that is to be charged is a vital issue in this case." The company attorney maintained that since the issue of a wage increase and a rate increase were directly tied to each other they should be ruled on together. Reed himself was not interested in either view, he simply wanted to have it stated for the record that Clausen was indeed the city attorney. As for Clausen's request for a separate case, Reed said "the proper time to make that request would be after the evidence has been introduced."[132]

In its final order, the Court acknowledged that the wages the men were receiving were fair when compared with other companies. The Court also acknowledged that the working conditions were being corrected and were thus not a basis for a wage increase. However, the wage increase was granted to the watch engineers and firemen on the bases of the skill and responsibility required to do the job. Apparently the company attorney's effort to convince the Court that the workers were unskilled had failed. This could be due to the fact that the engineers were not only tending a steam engine, but were also working with the electricity it produced. Another possibility is that because the chief engineer was not always present, the Court assumed that the majority of the responsibility devolved onto the workers with the next highest seniority. This is a possibility because in the actual wage increase, only the watch engineer and the firemen were given pay increases, while the wages of repairmen, oilers, and coal passers remained the same. The city of Atchison also got what it wanted out of the Court. In spite of Clausen's ill timed outburst, the ARLP company was informed that it would have to file a separate case to gain a rate increase.[133] The temporary delay of the rate increase turned into an even bigger victory for Atchison, because there is no indication that the Atchison Railway, Light, and Power Company ever brought a separate case for a rate increase.

Although the majority of the cases brought before the Court in 1920 were brought by laborers in occupations dominated by men, there were two cases brought by occupations dominated by women. Both cases were initiated by women working as switchboard operators for local phone companies. The first was brought by the switchboard operators working for the North East Kansas Telephone Company. The

company provided phone service for the region around Horton in the northeast corner of the state. This case was also one of the more confusing cases handled by the Court. The switchboard operators were represented in the Court by a committee of the Telephone Operators Union, Local 12846. The members of the committee were Sadie McNulty, Ethel Franklin, and Anna Grebb, and their complaint sought a wage increase.[134]

The company, of course, challenged their workers' demands. It contended that it could not afford a wage increase, and along with its answer sent copies of a private investigation on its revenue and its semi-annual report for the previous six months to demonstrate its inability to pay. In spite of their unwillingness to increase wages, company leaders seemed to take a great deal of interest in the accusation that they were being unfair to their workers. Although the company did not want the wages of the switchboard operators raised, they were very clear that they did not want them lowered either:

> From this complaint it would seem that we are guilty of a very serious offense . . . while we do not contend that our operators of the Horton Exchange are receiving a larger wage than they are entitled to, we feel sure you will agree with us after investigation our revenue and expense statement and wage scales of the neighboring Telephone Companies and local business concerns of Horton, that we are paying as high a wage as the average, and more than our revenue will permit.[135]

The case initially went as most of the Court's cases went. The case was set for hearing on September 29 in Topeka.[136] However, the company requested that the case be put off until the end of November. The company's request was granted, and the hearing was rescheduled for November 22.[137] Then the case seemed to take a strange turn. On September 22 the Court received a letter from Sadie McNulty withdrawing the union's

case. This request apparently took the Court by surprise, and several days later Carl Moore wrote back stating that before the case could be dismissed ". . . we wish to inquire a little further concerning this matter." Moore went on to ask whether the case had been resolved to the satisfaction of both the union members and the company.[138] Apparently the possibility of an out-of-court settlement had emerged, and the request for the dismissal had been sent. However, before Moore could receive a reply to his request, the settlement collapsed, and the case was allowed to proceed.[139]

The unusual chain of events continued to mount. On October 5 the Court was informed that Sadie McNulty and Ethel Franklin would no longer be representing the union in the case. According to the contract between the company and the operators, the book keeper and the chief operator could not be union members. Both McNulty and Franklin had been promoted to these positions. Although it is peculiar that two of the three committee members bringing the case would be promoted out of the union during the proceedings, there is no evidence that would suggest it was done deliberately to hamper the case. In the letter to the Court neither McNulty or Franklin give any indication that what had happened was unusual, and they informed the Court that Anna Grebb, the third committee member, would be continuing the case.[140]

In spite of the events leading up to the hearing, the hearing itself was unremarkable. As Anna Grebb was the only committee member left, she was the only witness in the hearing. The questioning focused around the wages and hours the operators worked. According to Grebb's testimony the telephone operators worked eight hours a day. The telephone operators received a starting wage of 16 cents per hour and worked up

to a wage of 24 cents per hour, after working six months. The only exception to those hours and wages was the operator who worked at night for ten hours and a flat wage of 20 cents per hour.[141]

The order was slow in coming. This was partially due to the reorganization of the Court that came at the end of the year. Also, the possibility of an out-of-court settlement reemerged, and delayed the Court's actions. In January 1921 the Court received another request for the withdrawal of the case. However, this time the withdrawal was delivered by the company on behalf of its workers.[142] As with the previous request for withdrawal the Court demanded to know if the case had been adequately settled, and stated that it would confer with the union on the matter.[143] Once again, as the Court waited for a reply, the out-of-court settlement collapsed. The Court finally issued its order on February 8, 1921. The day telephone operators were given a one cent raise for starting operators which would increase over a period of seven months to 27 cents per hour. The night operator was granted a flat two cent wage increase. The Court also granted wage increases to the chief operator and bookkeeper, although they were not union members and supposedly not involved in the complaint.[144]

The case brought against the Crawford Telephone and Telegraph Company did not have the unusual qualities of the case against the North East Telephone Company. The Crawford Telephone case was brought by a combination of unorganized switchboard operators and linemen for an increase of wages.[145] According to the complaint, the wages were so poor that when a worker gained sufficient skill she left the company to seek employment with a higher paying company. The complaint also stated that poor wages

were also hurting the quality of service. In replying to the case, the company maintained that it did not have the revenue to increase wages, but if a wage increase was granted it asked to increase its rates.[146]

During the hearing, the company attempted to show that the service was not affected by the wages being paid. The company submitted letters from various members of the community attesting to the quality of phone service. Fred H. Fimeal, of Girard, described the manager of the company as ". . . very prompt and anxious to correct any fault that we may have found with our phone service or phone equipment . . ."[147] R. S Gibson, also of Girard, commented that the manager of the company had stopped him regularly in the street to inquire about the quality of service.[148] In spite of these glowing testimonials, the Court granted a wage increase and ordered the company to install a bell to wake the night switchboard operators when their services were required. However the company's request for an increased rate was not mentioned.[149] The ARLP case had set a precedent in which companies would have to apply for rate increases separately from cases on industrial disputes.

The last major cases handled by the Court in 1920 were brought by the employees of two flour mills. Both of these cases proved to be complex. The first of the cases was brought by the unorganized workers of the Moses Brothers Mill in Great Bend, a subsidiary of the Kansas Flour Mills Company. This case started fairly amicably. Initially, the workers tried taking their demands to the company itself without involving the Industrial Court. Even in demanding an eight-hour day with time and a half for Sundays and holidays, the employees did not exhibit the adversarial attitude that most

employees had when negotiating with the company. The employees opened their petition by stating that:

> during our employment there has at all times been a most friendly feeling between us and our employer and it is our desire that that spirit of relationship will continue to exist . . . we further believe that between employee and employer there should be always manifested a desire to meet as friends and each work for the interest of the other.[150]

In spite of this cordial approach their demand for an eight-hour day was refused, and a complaint was filed by the workers in the Industrial Court. Although the company was unwilling to grant its employees' request, it also expressed the view that it had a special relationship with its employees. As the company attorney put it:

> . . . I want to say frankly to you [the Industrial Court] that the Kansas Flour Mills Company is very particular about its employees, very anxious to see that they have justice in every respect, and do not like to have a law suit with them[151]

According to L. E. Moses, one of the mill's owners, the process of converting a mill from an eleven-hour day to an eight-hour day would be very difficult. Moses further stated that the work was not particularly arduous or unhealthy. Another reason for not granting the workers an eight-hour day was the economic situation facing the grain industry after the war. The end of hostilities created a problem for farmers, because there was no longer great demand for grain in Europe. There was also concern that competition with grain imports from Canada and Argentina would have an adverse effect on American agriculture as well. Due to the fact that the welfare of the mills was directly tied to the welfare of the farmers producing the grain, the mills were also suffering.[152] The company maintained that if given the time it could come to an agreement with its employees

without involving the Court.[153] The employees also felt that there was some chance of resolving their differences, and even delayed filling out the Court's questionnaires in the hope that they would not need to.[154] The Court was receptive to this, and put off the case in the hopes that it would not have to become involved.[155]

However, no agreement emerged, and relations between the company and its employees began to deteriorate. The company was willing to increase wages by as much as fifty cents, but would not agree to shorter hours. The employees for their part only wanted shorter hours, and not a wage increase.[156] Each group began to blame the other for the inability to come to an agreement. Charles Carroll informed Huggins that most of the mills in the state operated on few hours than the Moses Brothers Mill.[157] Carroll also told the Court that no agreement could be reached because the manager, Homer Ayers, was unwilling to offer terms other than a wage increase.[158]

The company made its share of accusations as well. According to the company's attorney, Carroll, upon being informed that the company wished to seek an out-of-court solution to the problem, supposedly had an article printed in a local newspaper stating that the workers had won. The company attorney further stated that it was impossible to deal with the workers when they assumed that the company would acquiesce in their demands.[159] In another letter the company attorney accused employees of sabotaging the mill. According to the attorney, some individual or individuals unknown had partially cut some cables, put emery dust in one of the grinding machines, and destroyed a motor. The attorney went on to say that the reason for requesting shorter hours was in fact just a scheme to get more pay. The company attorney felt that the workers wanted an eight-hour

day so they could get overtime pay when they were inevitably required to work longer hours.[160]

The accusations, which continued even after the hearing, came to a head when the employees accused the company of firing workers for refusing to drop their case.[161] The company lay offs started quietly. When the harvest started in July, several of the workers left the mill to work as harvest hands with the understanding that they would be rehired at the end of harvest. Among those workers was A. G. Weide, one of the members of the committee who had called upon the company for shorter hours. When he returned from the harvest, he was informed that the mill was fully staffed and there was no place for him. However, the next day, two other men were hired by the mill. Weide felt that he was not rehired because of his involvement in the case. Not long after that, the mill closed and informed the employees that it would tell them when it reopened. Ten days later, when it did reopen, all the employees, except the other members of the committee, were called back to work .[162] The Court took what steps it could. The Industrial Court Act made it illegal to fire workers who brought cases against their employers, but the Court had no power to prosecute criminal infractions of the law. Instead it turned the case over to Richard Hopkins to investigate. Hopkins, in turn, told the Barton County attorney, Clyde Allphin, to investigate both the accusations of illegal lay-offs and sabotage.[163] There is no indication that Allphin made any such investigation. In mid November an anonymous citizen informed the governor that the company had moved both the plant manager and head miller to a new mill outside the county, apparently to avoid a potential investigation.[164] When confronted about these events, the company attorney's response

was: "it is my deliberate judgement that if the citizens will attend carefully to their own business, there will be no trouble between the Mill and its employees."[165] In spite of these comments, nothing further was done to enforce the Court's rules on illegal lay-offs. Even as late as January 1921, individuals from Great Bend asking about the illegal lay-offs were informed that the Court had no knowledge of that situation.[166]

The Court issued its order on the case on August 7, 1920. The order praised both the loyalty of the employees, as well as the commendable behavior of the management in its dealings with the employees. The Court's only regret was that both sides were unable to come to an agreement outside of the Court. No mention was made of the apparent instances of sabotage and illegal lay-offs. The actual substance of the order sided with the company on most issues. The Court felt that due to the economic situation of the time it would be inadvisable for the company to switch to an eight-hour day. The Court did suggest that as soon as possible the company should institute a nine-hour day. The Court also suggested that the company pay overtime for its employees, but that was a policy the company already adhered to. However, all of those statements by the Court were only suggestions, and the order ended by saying that the Court would not make any of its rulings binding.[167]

The Court's order left employees of the mill feeling betrayed. A resident of Great Bend stated that, "the men are working their 12 hours a day and afraid to say a word for fear they will loose[sic] their jobs. And they are all cursing your Industrial Court Law as a farce . . ."[168] The Court did look into the continued hostility of the employees toward the company, but the company simply denied it. "As far as the local manager or any other

manager of the company knows, there is absolutely no complaint among the employees at the mill . . ."[169] Little else was done by the Court except to suggest that the company institute a nine-hour day, which it apparently never did.[170]

The second case brought by mill workers was not as convoluted as the case against the Kansas Flour Mills Company, but it had its share of complexities. The case was brought by flour mill employees of the Western Star Milling Company in Salina. The workers in the mill had attempted to come to some agreement with their employer without using the Court. In March, 1920 the workers, represented by the International Union of United Brewery, Flour, Cereal, and Soft Drink Workers of America, Local 238, submitted a petition to the company demanding higher wages and the institution of an eight-hour day.[171] In response the company refused to accept the union as the employees' representative and also refused to pay the wages they demanded.

> . . . we prefer to continue the employment of our workers individually dealing and hiring each on their own merits and we cannot agree to the proposed schedule of hours and wages. Our mill is paying higher wages per unit of out-put and labor performance than any mill we know of, so we do not anticipate any trouble in keeping in our employ independent workers who are willing to accept our terms.[172]

The workers then submitted a complaint against the company to the Attorney General who in turn sent it along to the Industrial Court in late May. The complaint submitted to the Court not only included demands for increased wages and shorter hours, but also demands for Sundays and holidays off.[173] As their case was brought in the summer, it was also caught up in the Court's overload. By mid June, Paul Gassmann, the union's secretary, was writing to the Attorney General demanding to know what was

being done in the case and to express dissatisfaction with the service they were receiving. "It seems to me, the matter is dragging along for some reason. The boys are getting tired of waiting. Please let me know at once, why this is delayed so long."[174] In reply, Hopkins could only ask for the union's patience, informing them that the Court would be unable to get to the case until early July.[175] The delays in the case were not solely the fault of the Court. In the interim between filing the complaint and its being acted on, several of the workers had quit and new ones had been hired. As a result, the union had to request that the Court remove the names of the workers who had left and add the names of the newly employed to the complaint, which took time.[176] The case was further complicated when the company filed a motion to have the employees rewrite their complaint to make it more specific. The main reason for the demand for a more specific complaint was apparently an effort on the part of the company to deal with its employees as individuals and not acknowledge the union. The company demanded that each employee be listed separately along with their complaint. The company also asked for the names of all the workers that worked twelve and ten hour shifts and which employees had worked on Sundays and holidays.[177] By having the employees specify the individual workers the company could deal with the union without acknowledging its existence. This motion required a separate hearing, which was held July 12.[178] The motion was granted, so the employees had to resubmit their complaint.

Even after that hearing, there were still further delays. The company asked that the hearing on the case be delayed until late July, because the company was in the process of renovating its offices, making it difficult for them to get to documents pertinent to the

case.[179] The company also tried, unsuccessfully, to come to an out-of-court settlement with its workers.[180] As a result of these delays, the hearing was finally assigned for August 5.[181]

In response to the resubmitted demands of its employees the company focused on the issue of hours. The company pointed out that the only time workers were required to work twelve hours a day or on Sundays and holidays was when their labor was needed to keep the company functioning for the rest of the week. The company also stated that it would be impractical to grant an eight-hour day, because they would have to refit their equipment to operate under the eight-hour system. It also challenged the Court's jurisdiction over the case. The company maintained that it was not vested with a public interest and was thus not subject to the Court's control.[182]

Despite the delays and its apparent unwillingness to work with the Court, the company was able to settle its differences without a Court decision. In the process of the hearing the Court was able to forge an agreement between the employees and the company to begin a gradual transition to an eight-hour day. The Court ordered the proceedings stayed for two months to allow the company to make the necessary changes to its mill which would allow it to institute an eight-hour day. The issue of wages was put off until after the eight-hour day was instituted.[183] However, in the intervening two months, the company and employees were able to come to an agreement on wages, and the case was dismissed.[184]

As 1920 ended, the Court of Industrial Relations had proved itself a mixed blessing for the state of Kansas. The Court was not completely ignored by the labor

movement as many had feared. The Court did prove useful to unorganized workers and union locals in settling disputes that affected the individual companies they worked for. However, the Court had yet to convince the majority of the organized labor movement of its benefits. The Court still remained unused by unions at the district level to settle statewide disputes. For those groups that did participate in the Court, the process of adjudicating disputes between business and labor proved to be complex. The Court was not a tool used by business to destroy labor; however, there were limits to how much support the Court would give labor. In many cases, the Court was more than happy to grant small wage increases to laborers who they felt were deserving, but in some cases, where labor wanted changes in hours or working conditions, the Court provided little support. The Court found itself walking a fine line between the demands of employers and employees, and it often ended up pleasing neither.

The Court itself had its own difficulties in handling cases. The Court was unprepared for the mass of work that it would have to handle. When the Court of Industrial Relations had opened in February 1920, its staffing requirements were filled by the staff of the defunct Public Utilities Commission. That staff was expected to handle the hundreds of public utilities cases, as it always had, plus the new demands of settling industrial disputes. As a result, many cases did not receive the attention or timely processing they deserved. This served to alienate some laborers who expected fast consideration for their cases. Also, jurisdictional issues plagued the Court's first year of operation. Many of the companies that had cases brought against them, operated across state borders, which raised questions of the Court's jurisdiction. There was also the issue

of the Court's interference with Federal arbitration systems that had seniority in cases. The Court was able to justify its involvement in all of those cases, however, it was eager to avoid appeals to higher courts by companies unsatisfied with its opinions. There was also some question as to the ability of the Court to enforce its rulings. In most cases, the companies that were ruled against followed the Court's orders or referred them to higher courts. However, when they disobeyed the rulings, the Court had to rely on the diligence of the local justice system to enforce its rules. In the case of the Kansas Mills Company this system seemed less than effective. As the 1921 legislative session approached, there was a general consensus that something needed to be done to improve the efficiency of the Industrial Court, but what that should be would be a major point of contention in the year to come.

Chapter 5

1921: The Year of Change

Although the Industrial Court had been declared a success in its first year of operation, it had not completely lived up to expectations. In reaction to public dissatisfaction over the Court's handling of public utilities cases, governor Allen, with the help of his supporters in the legislature, was able to reorganize the Court. The Court was relieved of its control over public utilities cases, was consolidated with several other labor departments, and was staffed with two new Judges. This reorganization, it was hoped, would allow the Court to devote more time to settling industrial disputes. However, there were unanticipated results from the reorganization. The new Judges had a different and much stricter interpretation of the Industrial Court Act. This new interpretation resulted in fewer cases being handled, and those that were handled tended to favor industry over labor. As a result, 1921 proved to be a pivotal year in the Court's operation.

In November 1920, Henry Allen once again swept to victory in the gubernatorial race. That victory was closely tied to Allen's association with the Industrial Court. However, support for the Court itself appeared to be waning. Although the Court's role as labor mediator was widely appreciated, its management of public utilities cases had angered many. The Court, in these cases, had often seen fit to increase rates. These rate increases were not handled any differently than they would have been under the Public Utilities Commission. In fact, the Industrial Court handled public utilities cases in a more timely manner than the Commission had. However, the high profile nature of the Court's work had drawn undue attention to the increased rates, and increased public alienation

regarding the Court. As the Court's main promoter, Allen's popularity was unavoidably linked to the Court, thus he could not afford public dissatisfaction.[1] Allen's message to the 1921 state legislature, among other things, entailed a major reorganization of the Court. Allen further reinforced his intention to reorganize the Court through special messages sent to the state House of Representatives and the Senate.[2]

Allen felt that the public utilities work of the Court had to be separated from the work of settling industrial disputes. According to Allen, all the other shortcomings of the Court could be attributed to the overloaded work schedule of the Court resulting from its administration of public utilities. To support this view, he pointed to the dramatic difference between the number of public utilities cases and the industrial cases. In 1920, the Court settled 650 public utilities cases and only 28 industrial disputes. Allen even twisted a statement by William Huggins to support his reorganization of the Court. Allen reminded the legislature that during the 1920 special session, Huggins had questioned the Industrial Court's ability to handle the work of two agencies. In spite of this single statement, Huggins still felt that public utilities and industrial disputes should be handled together. However, Allen was willing to ignore Huggins' actual support for the combined functions of the Court if it meant the legislature would reorganize it.[3] The issue was further exacerbated by conflicts between the Court's Judges. Although Huggins opposed the splitting of the Court's functions, Reed, always Allen's avid supporter, once again backed the governor over the other Judges.[4] The Court's internal squabbling was common knowledge to the general public as Huggins and Reed used Topeka's newspapers as a forum for presenting their differing views.[5]

In spite of Allen's eagerness for change, the Industrial Court's reorganization would not come with the same ease as its creation. Two sets of bills were introduced, one set in the House of Representatives and one in the Senate. The first bill introduced into the House and Senate called for the discontinuation of the Court's authority over public utilities, and the second bill recreated the Public Utilities Commission. Conflict over the bills was intense in the House. Like Huggins, some members of the House still felt that the Court should have control over public utilities cases. As a result, the House was sharply divided between Allen supporters and Allen opponents. Debate over the bills began with a discussion over presenting the bills to the committee of the whole. However, Allen's supporters won a vote to have the bills sent to the State Affairs Committee.[6] The chairman of the Committee was James A. McDermott, who had been a major supporter of the Court.[7] By having the bill sent to the committee, Allen's supporters hoped to avoid most opposition to the reorganization. The Committee, to this end, did not notify the legislature of the dates and times of its hearings on the bills, so that opponents could not attend.

The opponents of the reorganization were well aware that Allen supporters were attempting to bypass them. On January 28, "without warning and almost before many house members realized just what had happened . . ." W. P. Lambertson presented a motion calling for Huggins and the other Judges to appear before House to be questioned on the reorganization. Allen supporters, realizing Huggins' opposition to the bills could hurt their case, moved to derail the motion. They issued a counter motion to have Lambertson's motion tabled, but it failed by five votes. Then they tried to hold up the

motion by questioning the right of the Judges to appear before the legislature. Tom Harley, the representative of Douglas County, told the House that "the judges should not bring their troubles on the floor of the legislature." Allen supporters further opposed the appearance of the Judges on the grounds that the legislature should not extend floor privileges to non-members. According to the House Speaker, the legislature needed no more long, drawn out speeches such as the one given by Frank Walsh in the 1920 special session.[8]

The issue was then turned over to the Rules Committee. The Rules Committee was dominated by Allen opponents, so the Committee issued a majority report allowing the Lambertson motion. However Allen's supporters, James A McDermott and Tom Harley were also members of the Committee.[9] They issued a minority report against the motion on the grounds that it was disrespectful of the governor and it lowered the dignity of the House of Representatives. Allen's supporters were able to organize enough votes to win the adoption of the minority report over the majority report. As a result, the motion to bring the Judges before the House was negated.[10]

There were also attempts to alter the Court though other bills or through changing the original bills. One of Allen's opponents, K. M. Geddes, called for a clause that would prevent Judges from running for political office while members of the Court. Geddes, and other members of the legislature, were concerned that the Industrial Court was becoming an "incubator" for the politically ambitious. There had been several attempts to promote Huggins and Reed for political office. Reed's obvious political aspirations and the Judges' dueling over the reorganization of the Court in Topeka's newspapers seemed to

reinforce that view.[11] There was also an attempt to impose qualifications on the Court Judges. A motion called for a clause to be inserted into the Court separation bill that would require all Industrial Court Judges to have the same qualifications as Supreme Court Judges. This clause was targeted both at Reed and Allen. Reed, a newspaper editor, had no real qualifications to be a Judge, and received his position through political patronage. By requiring specific qualifications for Industrial Court judgeships, Allen opponents hoped not only to get rid of Reed, but also to limit the governor's ability to use the Court as a means of promoting his supporters.[12] W. S. Gibbons, representative for Meade County, also introduced a bill to take away the governor's control over the Court completely, by making Court judgeships elective.[13] These attempts to modify the Court failed.

However the legislature could not simply divorce the departments. The original reason for combining the Public Utilities Commission and the Industrial Court - economy - was still a concern to many. To calm those fears, Allen supporters introduced bills into both the House and the Senate consolidating three other departments under the Court. The bills would place the Labor Department, the Free Employment Service and the Industrial Welfare Commission under the Court's control. The Labor Department was responsible for inspecting and reporting on mines and factories, as well as administrating the state's labor laws. The Free Employment Service, besides finding jobs for unskilled laborers, also regulated private employment service, investigated unemployment, and oversaw the wages and working conditions of harvest laborers. The Industrial Welfare Commission was generally responsible for women and children working in industry.

They conducted investigations of hours, wages, conditions, and enforced labor laws affecting women and children.[14]

The Court's control over these departments would be dramatically different from its control of public utilities, which had entailed the abolishment of the Public Utilities Commission and the combination of the duties of two departments. As a result, the Court had been doing the job of two departments with the staff of one. In placing the Labor Department, Free Employment Service, and Industrial Welfare Commission under the Court, little changed for the three departments. They kept their staff, as well as their duties. They simply answered to the Court instead of directly to the governor as they had before. This had the effect of consolidating the Court and the departments without eliminating any staff or cutting any costs. However, to the public, it looked as if several departments had been eliminated.

Ironically, after all the conflict over the separation, the House voted to dismiss their bills in favor of the Senate bills.[15] The Senate versions of the Court separation bills, as well as the bills consolidating the other departments, had gone though without conflict or amendment.[16] However, the Senate's involvement with the Court separation and the recreation of the Public Utilities Committee was far from over. The reorganization of the Court also meant a reorganization of the Judges. As a reward for their services, Allen made Reed the head of the new Public Utilities Commission and appointed James A. McDermott as Reed's successor on the Court. Judge Wark's one year term had also expired, and a replacement was needed for him. Allen chose John H. Crawford, the State Labor Commissioner, to take Wark's place. However, Allen's appointments had to be

confirmed by the Senate. Allen held off giving the Senate his list of appointments until the last day of the legislative session. McDermott's appointment was confirmed quickly. However, Reed's appointment passed by only one vote.[17]

The real conflict was over the confirmation of Crawford. Prior to his service as Labor Commissioner, Crawford had been a member of the Printers' Union. However, after becoming Labor Commissioner and supporting the Industrial Court, Crawford had been denounced widely by organized labor. Allen chose Crawford because he was knowledgeable about labor issues, but his falling-out with the labor movement guaranteed his loyalty to the Court. That same duality, however, resulted in Crawford being attacked from all sides by the Senate. Anti-labor Senators accused him of being biased in favor of labor, while pro-labor Senators condemned him for his disaffection with the labor movement.[18] The debate went on into the early hours of the morning, but no agreement could be reached. The legislature was forced to adjourn without confirming Crawford's appointment.[19]

Apparently, Allen had expected the conflict, and had deliberately held off sending his list of appointments to the Senate until the last day of the legislative session. With the legislature out of session, and a position on the Court yet to be filled, the governor was free to appoint whomever he wanted to the judgeship. As a result, in March 1921, John H. Crawford was granted a recess appointment to the Court of Industrial Relations.[20]

The nature of the cases handled by the Court also began to change in 1921. The typical cases in the first year had been brought by local unions or unorganized workers, often in the railroad industry, asking for wage increases, changes in work hours, or

James A. McDermott, a state representative, earned his Industrial Court judgeship by supporting the Court's reorganization in 1921 (Courtesy of the KSHS).

changes in working conditions. Although similar cases continued to be brought in 1921, the Court also began to receive cases from representatives of industry. The first of these cases came from the Fort Scott Sorghum Syrup Company. The sorghum syrup industry was highly seasonal. In the fall, sorghum was brought to the sorghum mill from the farms around Fort Scott. For the next three months, in what was commonly called the "campaign," the sorghum mill ran twenty-four hours a day, processing and refining the sorghum into syrup. During that time the mill had about a hundred workers. However, when the campaign ended and the syrup was stored in tanks, the majority of the workers were laid off. A chief engineer, engineer, and two firemen, belonging to the Brotherhood of Stationary Firemen and Oilers Local 412, were kept on to operate the boilers that kept the syrup warm while it waited to be sold.[21]

The problem for the company arose after the 1920 "campaign" when, due to the general decline in the agricultural market and the high competition from other forms of syrup, the company's sales dropped off by as much as 95%. To cut costs, the company laid off the engineer and both firemen, and allowed the chief engineer to run the boilers. However, the company had a closed shop contract with the firemen's union, and an engineer doing a fireman's job without being a member of the union was a violation of policy. The company felt that the union should allow the engineer to join the firemen's union, so the company would not have to violate its contract. The union, in an effort to protect the jobs of two of its members, did not agree. There was no clause in the contract for dealing with such an event, and the company and the union could not come to an

agreement on the matter. As a result, the Fort Scott Sorghum Syrup Company became first and only business to submit an actual labor dispute to the Industrial Court.[22]

In the hearing, the Court was confronted with several serious questions. The first issue was whether or not the Court had the right to interfere in the case. The Judges knew that the possible failure of one syrup plant was hardly an emergency, and the Industrial Court Act required that the Court only take action in cases of potential emergence. As always, though, the Court found a way to justify its involvement. As Huggins put it: "the amount involved is insignificant but the principle is important . . . any economic waste in the essential industries, if long continued, must be paid by the ultimate consumer, the general public." That principle was the second issue with which the Court had to contend: should a company in a poor economic situation be required to adhere to a union's principles even if it was part of a closed-shop contract?[23]

As the case was presented, it became apparent that local 412 had little hope of success. The company presented itself as the victim of an unfair technicality, in that they were being forced to pay workers they did not need. The company's engineer, upon questioning, admitted that he could run the boilers without the firemen. The union, on the other hand, demanded that the company adhere to the contract and rehire the firemen, and submitted a copy of their contract as proof.[24] However the testimony of Lon Richards, one of the union's international vice-presidents, weakened their case. Richards had stated in correspondence with the Court that the company should be made to stand by their contract.[25] However, in Richards' testimony, instead of holding fast to the contract argument, he admitted that he personally felt that in this case the engineer should have

been allowed to fire the boilers. The Court then called upon Richards to attempt to settle the matter between the union and the company. However, neither the company or local 412 were interested. They wanted a ruling by the Court, so they would have a precedent for use in future contracts.[26]

The Court, using a very loose interpretation of the Industrial Court Act, ruled in favor of the company. The Court readily admitted that from the perspective of the contract the company was bound to employ firemen instead of using nonunion men to do the jobs. However, the Court decided to focus on the issue of the open-shop versus the closed-shop. The Court maintained that the Industrial Court Act allowed for a closed-shop, but prohibited coercion in getting or maintaining a closed-shop environment. The Court felt that since the company wanted to use the engineer to fire the boilers, the company in effect wanted an open-shop. As a result, the Court felt that any action on the part of the union to maintain the closed-shop, even through a contract, was coercion. In spite of using a loose interpretation of the act to undermine the union, the Court denied that its actions were taken deliberately against labor, as it still maintained that the principle of the closed-shop was valid in situations where both sides agreed.[27]

The other cases brought before the Court by industry came from flour mills. The common thread in the cases brought against the milling industry in 1920 had been the unusually hard economic situation the milling industry faced after World War I. The mill cases served to alert the Court to the seriousness of the situation. Under the Industrial Court Act no essential industry could discontinue operations for the purpose of driving

the market price of their product up.[28] However, the economic situation by 1921 was going to force the mills to discontinue operations regardless of the act's provisions.

In late 1920 the Court appointed a committee made up of C. V. Topping of the Southwestern Millers' League, L. A. Fitz of the Kansas State Agricultural College, and G. A. Engh of the Industrial Court's accounting department to make up a series of rules and regulations to oversee the shutdown of mills in Kansas.[29] The rules the committee came up with were submitted to the Court in January, and were officially adopted a month later. Any company wishing to cut its production below 75% of its normal level had to apply to the Court individually. The Court was then to investigate their case to insure that the mill was not trying to drive up flour prices. If the application was granted, the mill had to try to find other employment for it skilled workers. The mill's unskilled labor had to be given advanced notice of the shutdown whenever possible.[30] In applying for permission to limit operations, the mills were given a form to fill out. This form asked for information on the mill's production capacity, the number of employees both skilled and unskilled, the conditions that necessitated the shutdown, and some indication of when they felt they could resume normal production.[31]

Soon applications to suspend operations were pouring in from all parts of the state. In spite of the work that went into developing the rules, the sheer number of applications made it impossible to carefully investigate each case. Typically, after the mill submitted its application the Court would simply grant it, issuing an order confirming that the mill was under the Court's jurisdiction and that the mill was not trying to drive up prices. The Court was so deluged with applications that it issued dozens of orders each

day granting mills the right to cease operations. The large numbers of applicants even caused the Court to change its filing system. Up to that point, the Court had numbered each case using four-digit numbers, but with the huge number of applications they simply began numbering them in the order that they were received, starting from one. Several mills, feeling that one form was not enough to explain their situation, also included financial reports or other material to show their desperate need. The Court, already smothered in applications, informed these individuals not to send them any materials besides the application form. As Carl Moore told the Smith Center Cooperative Mill, Elevator, and Light Company, "you will find that the facts you state in your letter will be easily stated on this form . . ."[32]

The necessity for mills to cease operations was so acute that many had begun shutting down even before the rules were issued. Those mills wrote to the Court asking what they should do, and were simply informed to shut down operations with the understanding that they should fill out the necessary application when they were available.[33] For the mills that did receive the necessary forms the reasons for shutting down were virtually the same - lack of sales. The shutdown affected mills of all sizes, from those employing as many as seventy-five employees to those employing only a miller and an assistant. Although the mills were sure of the need to shut down, most were unsure as to when they could reopen again. The few that bothered to answer that question on the application generally stated that they would reopen their mills at the soonest possible time.

The rules affecting the milling industry were in effect until early September, when they were rescinded. The decision to rescind the rules was indicative of the change brought on by the addition of the new judges to the Court. When the rules and regulations had first been instituted, Reed and Wark had still been members of the Court, and it was understood that the rules would be in effect indefinitely. However, by September, McDermott and Crawford had taken over, and their interpretation of the Industrial Court Act differed greatly from that of their predecessors. McDermott and Crawford placed more emphasis on fact that the Court was only to be used in situations that threatened the public good, whereas, Huggins, Reed, and Wark had always interpreted the jurisdiction of the Court in the loosest possible manner. Huggins, still the presiding Judge, continued to maintain that the mills should remain under the supervision of the Court permanently. McDermott and Crawford, however, overruled him and annulled the order, because grain prices were on the rise, and the reasons for instituting the rules had passed.[34]

The change in judges and interpretation had wider implications. Although the Court handled 125 cases in 1921, the majority of those cases were applications for mill shutdowns. The number of cases concerning industrial disputes sharply declined. As McDermott and Crawford constituted a majority, they began dismissing cases that they felt did not threaten the public good. Huggins, now representing the minority view, was the presiding Judge in name only. Crawford replaced Carl Moore with a new secretary, who gave all the correspondence received by the Court to either Crawford or McDermott instead of Huggins, as had been customary in the past. Huggins was increasingly

uninformed about the Court's actions, and often signed orders that had been written by the other two Judges without his consultation.[35]

Of the industrial disputes that the Court did handle in 1921, two came from the meat packing industry, which had little experience with the Court. The first of these cases was brought by the workers of the Swift and Company poultry plant at Parsons. Although the complaint came from an industry with no previous involvement in the Court, the complaint was fairly typical. In May 1921, the 40 or 50 unorganized workers employed by Swift submitted a complaint that their wages were unfairly reduced. The workers had been given a new contract with the new wages, but had refused to sign it. When the workers refused to sign the new contract, they were not called back to work. Besides the wage reduction, the workers also complained of their working conditions. According to the complaint, the workers had no set hours, but were simply on call 24 hours a day.[36]

In response to the complaint, the company, filed for, and was granted, an extension until August 1.[37] On August 1, the company filed a motion to have the charges dismissed on the grounds that the Court had no jurisdiction over the case and that the Industrial Court was unconstitutional.[38] In bringing up the question of constitutionality rather than focusing on the Court's jurisdiction the company guaranteed that its motion to dismiss would be overruled. Although the new Judges may have interpreted the Industrial Court Act differently, they still supported the Act. On the same day as the motion was filed, the Court issued the opinion signed by all three Judges that the Court was constitutional. The same opinion virtually ignored the issue of jurisdiction.[39] There was

another issue that may have added to the Court's unwillingness to dismiss the charges. The Swift plant at Parsons employed a large number of women and children. By having them on call 24 hours a day, the company frequently violated laws that protected women and children from overwork by limiting their hours.[40]

The company attorneys no doubt expected their motion to be dismissed. As soon as their motion was dismissed, they submitted their formal answer to the charges. Their answer, for the most part, was simply a restatement of their motion to dismiss. However, it also pointed out that since the workers filling the complaint had refused to sign the contract they were no longer employees of the company, and therefore had no right to submit a complaint.[41] In the hearing on the case the company attorneys also maintained that the company's bonus system would make up for the loss of wages. The workers agreed with this assessment, but doubted the company's willingness to give out bonuses. On the issue of violating labor laws the company simply pleaded ignorance of the law.[42]

In issuing their order the Court focused more on the violations of the labor laws than on the actual complaint of the workers. The Court accepted the company's plea of ignorance, and chose not to prosecute them further on that subject. However, the Court did order the Industrial Welfare Commission to conduct inspections of the plant to see that the company adhered to the laws in the future. As for the wage decrease, the Court allowed it to stand on the basis that it was sufficient in conjunction with the bonus system. If the workers felt that the bonus system was not being adhered to, they would have to file another complaint.[43]

The second case dealing with the packinghouse industry was brought by local 176 of the Amalgamated Meat Cutters and Butcher Workmen of North America who were employed by the Charles Wolff Packing Company in Topeka. In December 1920, the contract between the packing company and its workers expired, and the company refused to renew it. In mid January, the company cut wages, eliminated time-and-a-half for overtime, and ended the guarantee of 40 hours of work a week. The local voted to strike, but the district officers were able to convince them to take their case to the Industrial Court. The case was accepted, however, the Court was in the middle of being reorganized, so nothing was done with the case.[44] In March, the situation in the meat packing industry broke down nationwide. The wage cuts, as well as the cancellation of overtime, and hour guarantees experienced by the employees at the Wolff packing plant, were replicated in packing plants around the nation. With the end of war time constraints on food production, which had been beneficial to the union, the packing companies reverted back to their pre-war labor standards. The national office of the Amalgamated Meat Cutters and Butcher Workmen of North America in Chicago called upon its locals to vote to give them the power to call a national strike if the leadership felt it was necessary.[45] The union members at Wolff Packing Company, tired of waiting for the Court, voted overwhelmingly to grant the national leadership the right to call a strike.[46]

Realizing that the situation was deteriorating fast, the Court acted on the Wolff case. They tried to make a quick investigation, but both sides in the case submitted so much evidence that the Court had to take time to sift through all of it. However, in the interim, the Court issued a temporary order in an effort to hold off a potential strike. The

Streetcars of the Arkansas Valley Interurban Railway. The employees of the Arkansas Valley brought two cases before the Industrial Court. Their second case was the last ever heard by the Industrial Court (Courtesy of the KSHS).

temporary order upheld the terms of the old contract until the Court could finish going through the evidence and issue a final order. The Court's temporary order was justified on the basis that the work done by the packinghouse workers was particularly brutal. The Court noted that besides the long hours and exhaustive nature of their work, the packinghouse employees worked in an environment that varied from extremely high temperatures in the meat cooking rooms to extremely low temperatures in the refrigeration rooms.[47]

The Court issued its final order in the case on May 2. As the possibility of a nationwide packinghouse strike seemed increasingly likely, the Court's order was weighted decidedly in the union's favor.[48] The order set the wages of 165 positions. Over half of those wages were the same as those asked for by the union. [49] The order also called upon the company to supply a well-ventilated cafeteria for the workers, and it granted women equal pay with men in similar jobs. This section of the order, however, was deceptive. The section only called for equal pay for women doing similar types of work as men. However, in the packing plant women always worked separately from the men. Almost every department at the Wolff Packing Company had a job designation of "girl." According to the order, girls in each department were to receive 35 cents per hour, 7 ½ cents less than the lowest paid male laborer. As a result, the company was not encouraged to give women equal pay, but rather keep men from doing women's jobs.[50]

In spite of giving the union several of its major demands, the Court also tried to placate the packing company with concessions. Instead of granting the union time-and-a-half for overtime, the Court ordered a compromise system. The company could work its

employees beyond the normal eight-hour day for two days without having to pay time-and-a-half. On the third day, though, the company would have to pay time-and-a-quarter for the ninth hour of work, and time-and-a-half for any additional hours. The Court also refused to renew the guarantee of 40 hours of work a week, and the hours for beginning work were at the company's discretion.[51]

In the short term the Court's solution to the case was successful. When the union called a nationwide strike in December, local 176 at the Wolff Packing Company ignored the strike order.[52] However, in the long run, the Court's attempt to get the company into accepting its decision failed. The Wolff Packing Company, refusing to accept the Court's decision, took its case first to the Kansas Supreme Court and then to the United States Supreme Court. Those appeals (which will be discussed later) dramatically reshaped the Kansas Court of Industrial Relations.

In spite of hearing fewer cases in 1921, the Court still heard some cases that were typical of its first year of operation. In fact, several cases were brought by former complainants. All the wage orders issued by the Court in 1920 had been temporary, and when the time period elapsed several of the companies attempted to revert back to their old wage rates. In the spring of 1921, the order giving the members of the Amalgamated Street and Electric Railway Employees of the Topeka Railway Company and the Wichita Railroad and Light Company pay increases expired, and the railways cut their wages.[53] In response to this, the union brought a complaint before the Industrial Court. The Court's reaction was simply to extend its original order, thus forcing the company to rescind its wage cut.[54]

Similarly, in July, the Joplin and Pittsburg Railway Company (J&P) informed its workers that on August 1, at the expiration of the wage orders the Court had granted to many of the employees, it would cut wages by 20%. The members of the Amalgamated Association of Street and Electric Railway Employees working for the J&P, as well as the J&P linemen and trackmen filed separate complaints against the company. Because their wages had all been cut simultaneously, the workers' complaints reached the Court at the same time and the Court was able to combine all of their cases.[55] Again, the Court simply extended the order for another year.[56] This situation of expiring orders could have turned into a problem for the Court, since it could not issue permanent orders. However, if all the companies it ever ordered to increase wages cut their wages after the orders expired; they could not reissue the orders without alienating a substantial portion of the business sector. Fortunately for the Court, it never came to that. The Topeka Railway Company, the Wichita Railroad and Light Company, and the J&P were the only companies to attempt reverting to their pre-order wages and working conditions after their orders expired.

The Court also received a few original cases from railroad workers, but those did not receive the same attention as railroad labor disputes brought in 1920. In the summer of 1921, the Court received a case brought by the Coach Cleaners and Helpers Union Local 16331 against the Pullman Car Company. The Pullman Car Company maintained a small cleaning crew at the rail yard at Argentine just outside Kansas City that cleaned Pullman cars and conducted minor repairs.[57] One of these car cleaners, Lula Palmer, was fired for absences due to illness. The point of contention was that she had been fired in

violation of an agreement that the union had with the United States Railroad Administration, which had control over the Pullman Company during the war. According to the rules of the agreement, which were still in effect when Lula Palmer was fired, a union member could not be fired without five days notice and an investigation. According to the car cleaners union, Lula Palmer had not received five days notice or an investigation. When Palmer brought this point to the attention of the Pullman management, she was ignored, and the union took the case to the Industrial Court.[58]

The Court reluctantly agreed to take the case. The Argentine Yard was an important rail hub, and the car cleaners were an important part of train service. However, as the case involved only one person, the Court would have preferred to settle the matter without a formal hearing. Richard Harvey, the Court's new attorney, wrote to a member of the Pullman management at Kansas City to try to set up a meeting between company and the union to resolve the issue.[59] However, the Pullman management at Kansas City stood by their decision to fire Palmer, and refused to compromise.[60]

The Court held its hearing in early May. The union's case revolved around the company's violation of the agreement between the union and the Railroad Administration.[61] The company, on the other hand, denied it was ever part of the agreement. The company also firmly maintained its right to discharge any of its employees that were not performing their duties properly. According to the company, Lula Palmer was fired because of her incompetence and absenteeism, which made her an unreliable worker.[62]

In issuing its order the Court revealed its reluctance to take sides in the case. The Court agreed with virtually every point the union made, but then refused to order the company to rehire Palmer. The Court stated that because the Pullman Company was under federal control during the war it was subject to the agreement between the railroad administration and the car cleaners union. The Court further acknowledged that the company had violated that agreement by not giving Palmer five days notice. The Court also pointed out that Palmer's absenteeism was the result of unavoidable illness. However, the Court maintained that regardless of the issues involved, Palmer's illness had impaired the efficiency of the company, which adversely affected the public. As a result, even though the company had violated the agreement, the Court would not reinstate Lula Palmer.[63]

In mid March the Industrial Court received a complaint from the trackmen of the Arkansas Valley Interurban Railway. The main complaint was a familiar one. The Arkansas Valley, based in Wichita, had recently cut the trackmen's wages from 42 ½ cents per hour to 35 cents per hour. The trackmen pointed out that 42 ½ cents per hour was ". . . hardly sufficient to provide us with the necessaries for our selves[sic] and families," and 35 cents was completely unacceptable.[64]

From the company's perspective, they had dealt with their workers in a fair manner. The company president informed the Court that the company had been losing money throughout the year, and that they would be lucky to break even. To cut costs, the company had to cut wages, but it had offered to extend the working hours to make up for the lost wages. The company also pointed out that all the other workers on the line had

accepted the wage cut, and that if they wanted to, the company could find plenty of people who would work for 35 cents per hour.[65]

The Court once again took a less decisive role in the case. The hearing was held at Wichita in mid April. The trackmen presented their evidence until noon, when the Judges halted the proceedings. They informed the two parties that the case was not that serious, and they should settle the issue between themselves during the recess. When the Court reconvened at 2:00pm the Judges found that an agreement had not been reached, so they ordered another recess until 4:00. By 4:00 the trackmen and the company had reached an agreement. The trackmen on each section of the line could vote whether or not to work for eight hours a day at 40 cents an hour or for 10 hours a day at 35 cents an hour. The Court was apparently satisfied with this agreement, and dismissed the case.[66]

Nineteen twenty-one also saw the first serious strikes in violation of the Court's anti-strike clause. There had been several coal strikes since the creation of the Court, but none of them had been particularly significant to anyone other than the Court and the miners. In August, though, the telephone operators at the Horton exchange of the Northeast Kansas Telephone Company went on strike. In the year following the original case between the Horton operators and the Northeast Kansas Telephone Company, the company had found it necessary to cut costs. To do this they eliminated the position of Chief Operator, which had been a higher paying position. The phone operators took exception to this action and went on strike, leaving Horton and the surrounding area without phone service. For the women involved in the strike, it was a simple case of protecting their wages. However, the company president could not accept that the women

were acting alone. The president, who wrote to the Court to ask them to enforce the anti-strike clause, felt the women had been adversely influenced by men from the local railroad union.

> We have had continuous trouble with our Horton operators for several years past, due to the agitation and advice given them by some of the railroad union men, which is due, it seems to us, mostly to gain favor with the girls. We sincerely request that your Honorable Court investigate this condition . . . and eliminate the disturbing elements . . .[67]

The Court, for its part, was not interested in who was at fault in the case, only with restoring the telephone service at Horton. Seeing the need to move quickly, the Court dispatched Randal Harvey to Horton to try to settle the case without a formal hearing. Harvey arrived early on August 3 to discover the telephone exchange at Horton deserted. There were no representatives of the telephone operators or the company at Horton. Conducting a quick investigation, he learned from local officials that the town had been without phone service for three days, and no one had bothered to tell the townspeople why. Harvey sent messages to the company office at Hiawatha and to the telephone operators to meet with him at Horton by 11:00 a.m. Although no attempt had been made by either side to resolve the matter prior to Harvey's arrival, both groups arrived at the meeting and presented their sides of the controversy in great detail. Harvey made the Court's position equally clear. Regardless of the controversy, until an agreement could be reached, telephone service had to continue for the good of the public. The rest of the afternoon was spent working out an agreement between the operators and the company. After the agreement was reached, the Court essentially dropped the case. Although the telephone operators had been on strike, they had not picketed or been

otherwise disruptive. Also, Harvey laid the blame for the incident on both the operators and the company because of the ". . . unwillingness of each to take the first steps toward . . ." resolving the conflict.[68]

The second strike the Court had to deal with was not resolved so amicably. The 1921 packinghouse strike had its roots in the federal labor controls of World War I. In 1917, in an effort to exploit the labor concerns brought on by the war, the Amalgamated Meat Cutters and Butchers Workmen of North America laid out a series of demands to the packinghouse industry. These demands included union recognition, pay increases, time-and-a-half for overtime, and equal pay for men and women. The packers initially refused the demands, but the federal government, afraid of hampering the war effort, stepped in to broker an agreement. The agreement was hard to reach, though, and after several false starts, the Secretary of Labor appointed Federal Judge Samuel B. Alschuler to arbitrate the disputes between the union and the packers. Alschuler, after hearing both sides of case, granted the union virtually all their demands except formal recognition.[69]

The union's success was only temporary. The end of the war had the same effect on the packing industry as it had on so many others. By the end of 1920, the meat packing industry was feeling the effects of the postwar depression. In February 1921, the packers reached an agreement with the Secretary of Labor ending their obligation to Alschuler's ruling. Not long after that, packing houses began reverting back to the poorer pre-war labor standards.[70] However, some of the packers made an attempt to soften the blow to their workers by taking up the cause of welfare capitalism. Popular during the 1920s, welfare capitalism was the concept that labor turmoil could be avoided and unions could

be undermined by employers initiating progressive labor relations policies.[71] To this end, the packing companies began to institute company unions led by boards made up of both management and workers. These unions were meant to give the workers some sense of control over their environment, but still maintain the companies' authority and support company policies. However, between the wage cuts and the company unions that threatened the supremacy of the independent labor movement, unrest in the packing plants increased. In March, the national leaders, though an election, were granted authority to call a strike. However, the possibility of a peaceful resolution delayed the strike for months. On November 31, the butchers called a national strike to begin December 5.[72]

Kansas City was a major packinghouse center, so the Industrial Court moved quickly to investigate the impending strike. On December 2, Richard Hopkins, after holding a conference with the governor and the members of the Court, filed a complaint with the Industrial Court to the effect that the strike would endanger the public. The next day the Court held its first hearing in the city hall at Kansas City to determine the causes of the strike, its probable intensity, and to find the local leaders responsible for it. There was a great deal of speculation on the possible outcome of the investigations. Some felt that the Court would be able to reach a compromise between the packers and the union in Kansas. Others felt the State would act the way it had in response to the 1919 coal strike, and take control of the meat packing industry.[73]

In the process of preparing for the hearing, the Court issued over 50 subpoenas. These subpoenas summoned specific union leaders, including the president, secretary,

and treasurer of the Amalgamated Meat Cutters and Butcher Workmen of North America District 3 in Kansas City to appear at the hearings. The Court also subpoenaed the officers of various local unions, as well as representatives of the various packing companies in Kansas City, including Armour, Cudahy, Jacob Dold, Swift, Morse, Wilson, Drovers, and Fowler.[74]

In spite of the long list of union leaders who were supposed to be at the hearing, only one appeared. Steve Husk, a casing worker at Wilson and Company and the president of local 9, gave the Court a basic outline of the events that had been transpiring in Kansas City since the Court's arrival in Kansas City. On November 28, Cornelius Hayes, the national president of the union, came to Kansas City and addressed a crowed of 2000 packinghouse workers. The motive for his visit was to assess the feelings of the union membership, which the *Kansas City Kansan* described as "indignation almost at the rioting point . . ." over the wage cuts and the institution of company unions.[75] According to Husk, three days after Hayes' visit, the national headquarters sent a telegram to the district 3 office announcing that the strike was to start at six in the morning on December 5. That telegram was first taken to a special meeting where local presidents were instructed to inform their membership. The strike order was also announced that afternoon at a mass meeting that had been called to plan the strike.[76] When asked if he had seen the order or passed it on to anyone, Husk was quick to deny it, since the Industrial Court Act made it illegal to promote a strike.[77]

The packing companies, unlike most of the union members, did attend the hearing, but most offered little information on the situation. The packing companies, no

doubt afraid of having their plants taken over by the State, were quick to play down the significance of the strike. In fact, the attorneys for the packers pointed out that although they had appeared they denied the jurisdiction of the Court.[78] As far as most of the packing companies were concerned, the strike had more to do with their refusal to recognize the butchers union than with issues of wages and company unions. The packing companies had issued the pay cut, and the company unions had voted in favor of it. From their perspective, the issue of wages was settled. When questioned on what they knew about the impending strike, most claimed to know only what they read in the newspapers. As far as a threat to the public good was concerned, the companies felt that so long as the anti-strike clause was enforced there would be no limitation of production. There was also a general feeling that most of the workers would not strike at all. The superintendent of Swift and Company said "our employees as a whole, I feel, are perfectly satisfied with the reduction that the assembly [the company union] agreed upon . . . I can't conceive of our employees going on a strike." After questioning the packing company representatives, the Court issued an order forbidding the union to strike, and adjourned until the afternoon of December 5th.[79]

In spite of the Court's order, preparations for the strike continued. District 3, under the advice to the national leadership, chose to ignore the Court's order. Each union local held a meeting on Sunday to elect their strike officers and plan their picketing system. The packers for their part were also making preparations. Company agents were arranging for strikebreakers to be brought in to run the plants on Monday. Guards had been posted in all the plants, and one had supposedly set up a battery of machine guns.

The companies also stated that striking workers would lose all rights to their jobs as well as their seniority. The local police force was also put on alert. All off-duty officers were recalled, and the department was put on twelve hour shifts instead of the usual eight. Henry Zimmer, the chief of police, made it clear that "strike or no strike, the law must be obeyed . . ."[80]

Monday morning found between 200 and 700 strikers massed around the gates of the various Kansas City packing plants. The union claimed that 98% of the wage workers at the Wilson and Cudahy plants were out on strike, while 85% to 90% of the workers in the other plants were on strike. The companies denied these high percentages, and stated further that departments that were understaffed would have strikebreakers before the day was over. The companies also maintained that many of those who were not at work were not striking, but were simply afraid to cross the picket lines. The city police closely patrolled the packing plants, but there was little violence. In fact, in several cases the mayor was able to disburse unruly crowds simply by talking to them. The companies claimed that their plants were being picketed in violation of the law, but the union members claimed they were merely standing around and watching.[81] Regardless of the interpretation, the Court was determined to enforce its rules. Judge Crawford informed the local authorities that if the picketers were not removed from the streets marshal law would be declared. City officials and union members alike, eager to avoid the introduction of military troops, quickly disbursed the striking workers.[82]

On December 5, while the strike was in progress, sheriff W. J. Wright reissued the subpoenas to the union leaders. The Court stated that any union leader who had not

attended the first hearing would not be prosecuted, however, if the second hearing was missed they would be guilty of a misdemeanor.[83] As a result, the union leaders who had been subpoenaed appeared. The Court questioned the various union leaders on their views about the company unions. This questioning revealed a decided distrust of the system. The union leaders maintained that the company unions were indirectly under the control of the management. In most cases, the company unions were led by a committee made up of an equal number of workers and members of management. However, most of the individuals representing the workers were skilled tradesmen who were paid by salary not hourly wages. Therefore, wage cuts did not affect them, and the management could rely on them to support any wage reductions they wished to make. There was also evidence that the companies had taken more direct action to control the company unions. A witness claimed that the management coerced the workers' representatives on the leadership councils to approve whatever changes the company wanted to make. One of the members of the leadership board of Swift's company union testified that he had been fired for voting against the wage reduction.[84]

The union leadership was also asked why they had not taken their complaints to the Industrial Court. Although the union had had good results from arbitrated labor agreements during the war, they had little faith in the Kansas Industrial Court. The Court had granted the Wolff Packing Company workers a wage increase, but the packing company was in the process of challenging it. From the perspective of the union there was no point in having a state-level department arbitrate an agreement that the company could challenge in a higher court. Also, the decision to strike had come from the national level,

and the unions felt obligated to follow their leadership's orders. As one union member put it ". . . our organization is governed the same as any state or any government institution. We have got a constitution and must abide by it."[85]

Although there were plenty of questions about the reasons for the strike and the decision not to utilize the Industrial Court, the main focus of the questioning was to determine who was responsible for instigating the strike in Kansas City. Each union member was questioned about what role they had in the transmission of the strike order. Like Husk, most of the union members denied any involvement in the transmission of the strike order. They also avoided implicating other union members by pleading ignorance. Finally, when the Court was able to determine who had received the telegram giving the order to strike, that person said he had destroyed the order, and claimed not to know how the order reached the mass meeting. L. W. Mendelson, one of the trustees of the district council, was asked to identified the individual who had read the order at the mass meeting, but he avoided the question by claiming he had been too far from the rostrum to see who had read it.[86]

In fact, the Court already knew, from the local newspapers, which members had received and transmitted the orders to strike. However, the Judges were determined to get the union leaders to admit that they had issued orders to strike. Jack Wheatly, the district president, was browbeaten for several minutes by the Court's attorney in an effort to get him to identify the individual who had read the strike order at the mass meeting. Finally, one of the other union members, disturbed by the treatment of Wheatly, stood up and told the Court that George W. Reid had read the order. In reply to the outburst, Huggins told

the man "we know who read the message. We are trying to protect these men from a perjury charge." Still Wheatly refused to identify Reid, until the attorney pointed to Reid and asked if he was the one who read the telegram at the mass meeting. At that point, Wheatly gave in and admitted that Reid had read the strike order. Mendelson was then recalled to the stand, and seeing no point in further denials, also implicated Reid.[87]

At that point, the Court called George Reid for questioning. After the trouble the other witnesses had gone to to avoid implicating him, Reid was fairly open about his part in the strike. Reid, an African American, not only acknowledged reading the strike order, but also admitted that he was the commanding officer of the striking workers. As the strike commander, Reid's job was to keep the men organized and see to it that they were nonviolent. However, he denied knowing that there was an anti-strike law in Kansas. He also denied that it was the intent of the strikers to prevent others from working. According to Reid, his plan was to have the strikers simply watch the plants and see how effective their action had been. As far as the Court was concerned this was still a violation of the law. They further pointed out that the cessation of work was a threat to the pubic good and also illegal. The Court also questioned Reid on the "silent chaperone system." Under this system strikebreakers would be followed to their homes by strikers who would then try to convince them to join the strike. Although there was no evidence of illegal activity the Court interpreted this action as coercive.[88]

The Court continued to hold sessions until December 14, so that any individual who had been attacked or otherwise harmed by the strikers could testify. However, no one appeared, and the Court decided to issue the results of its investigation. The Court

decided that it would make no effort to mediate the case or to take over the packing plants. According to the Court, since neither side wished them to adjudicate the dispute, they would not. However, as the public still needed to be protected, the anti-strike clause would continue to be stringently enforced. This order effectively changed the Court from a board of arbitration to the strikebreaking tool labor had feared.[89]

The Court readily admitted that their decision to enforce only the anti-strike clause had been partially motivated by the uncooperative attitude taken by the union.[90] Convinced that the Court was working for the packing companies, the union prepared itself for a long battle.[91] The strikers continued to picket the packing houses, and on December 8 organized a parade. The parade, led by a group of ex-service men and a large number of women, wound its way from the union hall past all the packing plants. The police for their part showed little interest in enforcing the anti-picketing law. As long as the strikers remained peaceful and did not interfere with any of the strikebreakers, the police were content to let them remain on the streets.[92]

However, the strike was not completely devoid of violence. On December 7, one striker died after a gun battle with strikebreakers in a rail yard.[93] On December 11, a riot broke out. Several hundred strikers massed around a packing plant waiting for the strikebreakers to arrive. While they waited they began discharging firearms. Police were rushed to the area to disburse the mob. In the process, one striker was shot and a police car was stoned. As the mob began to break up, union leaders arrived and encouraged the strikers to go home.[94] Two days later, several strikers who the police were trying to search dropped their guns in the street and dashed across the state line into Missouri. To combat

McDermott and John H. Crawford, much to William Huggins' distress, interpreted the Industrial Court Act as existing solely for the protection of the public and only in cases of emergency. The Court would no longer be used to settle every dispute that was brought to it. In the disputes that it did settle, the Court often sought to protect the public by siding with industry. As a result, the Court, which was supposed to protect the rights of both labor and industry, by late 1921 appeared to have confirmed the labor movements' fears that the Industrial Court would only protect industry at the cost of labor.

Chapter 6

Coal vs. Court

The Kansas coal miners had played an important role in both the Industrial Court's creation and operation. Not only was a coal strike the impetus for the Court's creation, but conflicts between the miners and the Court continued for most of the Court's existence. For Kansas miners any restriction of their right to strike was unacceptable. Under the direction of Alexander Howat, the miners of District 14 led an opposition movement against the Court. Their resistance consisted of strikes and court cases challenging the Court's authority. For its part, the Industrial Court saw the miners as an everpresent threat to the public's safety. However, the judges' own divisiveness often prevented them from making any concerted effort to challenge the miners. Ultimately it would be the state's judicial system and the UMW's international leadership that would effectively break District 14's resistance.

The opposition of Kansas miners to the Industrial Court was almost immediate. The Industrial Court Act was passed on January 24, 1920, and on January 26, 400 miners from around Dunkirk, Kansas, in Crawford County, went on strike in protest of the act.[1] Although the miners were back at work the next day and the strike itself only involved a small percentage of the state's miners, it had come on the heels of a major nationwide coal strike, and created a great deal of concern throughout the state. In an initial investigation, Attorney General Richard Hopkins could find no link between the strike and any of leaders of the UMW. As a result, Hopkins chose to ignore the strike itself, but

filed a case with the Industrial Court on February 2 calling for a thorough investigation of the coal industry in Kansas.[2]

The investigation took almost a year and a half to complete, and covered all aspects of the coal industry, including labor, mine operations, and the retail sale of coal. The final report revealed a decided bias against the miners. The report found that the cost of coal to the public was unduly high, and attributed that cost to the poor mining techniques, the crippling effect of the UMW on the mining industry, and the ethnicity of the miners themselves. According to the Court, the increased cost of coal was due to the increased production of slack. As the coal came out of the mine it was run over a screen, which graded it by size. Although there were many different grades of coal, the three basic grades were lump, nut, and slack. Slack was essentially the small bits of coal and coal dust that fell through the screen. Having large amounts of slack meant that there was less high quality coal on the market, and thus drove the cost of that coal up. According to one operator, the production of Kansas mines during and after the war was as much as 50% slack. The Court accepted this statement, in spite of the fact that several other operators and miners claimed that slack production was much lower.[3]

The Court justified its acceptance of the high production of slack on the basis of mining techniques. Most Kansas mines operated on the "room and pillar" system. Under this system a vertical shaft between eight and thirteen feet wide, along with a smaller ventilation shaft, was sunk to the coal deposit, which was between thirty-five and three hundred feet underground. On the surface the top house or "coal tipple" was built over the shaft to house the hoisting and the coal processing equipment. At the bottom of the

vertical shaft a horizontal shaft was extended out parallel to the coal seam. Smaller shafts, called "rooms," were extended out perpendicularly from the horizontal shaft into the coal seam. As the rooms were cut deeper and deeper into the coal seam, periodically shafts would be cut between the rooms, creating pillars. These cross shafts were meant to provide ventilation. Each room had space for two miners. These miners would drill holes in the coal seam at appropriate points, and insert tubes filled with either black powder or dynamite, called "shots." In the late 19th century, Kansas law had required the miners to undercut the coal seam to the same depth as the holes drilled for the shots, so that when the shots were detonated the coal would drop into the empty space below it. However, in the early 20th century that law had been revoked, and miners were simply "shooting off the solid," that is detonating the shots without the benefit of undercutting the coal seam. Shots were set twice a day, at noon and at the end of the shift. Once the shots were set the miners returned to the surface, and a specially trained "shot-firer" would go through the mine inspecting and detonating the shots. Then the miners would return and load the coal into cars. The miners were paid by the ton of coal mined, which was weighed by a company scale operator and verified by a union "check weigh man." The miners also received a small salary for "dead work," or work not related to the actual extraction of coal, like shoring up the mine shafts and loading the coal into cars. Originally, miners had only been paid for the coal that did not fall through the screen, but by 1920, they were paid for "mine run" coal, that is all the coal they mined. Before the miners received their wages, though, the company made certain deductions. These deductions included the "check-off" system, by which they automatically deducted the miners' union dues or fines

for violating union by-laws, and turned them over to the union. There were also deductions for the cost of explosives and other equipment used by the miners.[4]

According to the Court, this system perpetuated the high quantities of slack. The Court claimed that the increased use of dynamite instead of black powder and the process of "shooting off the solid" was pulverizing the coal as the shots were detonated, creating large amounts of slack. Because the miners got paid for all the coal mined there was supposedly no motivation for controlling the amount of slack. However, there were several factors that the Court did not take into account. There were other reasons for the miners not to create slack. Slack was lighter than lump or nut coal and thus paid less. It was also harder to load into cars than larger grades of coal. Furthermore, using enough explosives to pulverize the coal would have the effect of destabilizing the mine shaft. The Court also did not realize that when the miners were only being paid for lump and nut grades of coal there was no point in loading slack, so most of it was simply taken out of the mine with the other overburden. When the miners began to be paid for all the coal mined, naturally the amount of slack increased.[5]

The Court attributed the continuation of what it considered to be poor mining practices to the UMW and the mine operators' for tolerating the union. The Court described the UMW in Kansas as "a powerfully organized group of inefficient workmen, with no expert qualifications . . ." The Court further condemned the UMW for

> . . . securing the passage of favorable meaningless laws and iron clad contracts with their employers, where by they now draw excessive wages for their labor and practically dictate every detail of the operation of the coal mines.

The operators were also at fault for not opposing the UMW. According to the Court, "the mine owners, rather than meet these issues when they appear in detail, have successively acquiesced until they are powerless to resist . . ."[6]

The Court also attributed the conditions in the Kansas coal fields to the large number of immigrants present in the field. The 1920s had revealed a heightened sense of nativism in the United States. The hatred of Germans that had been cultivated during the war was easily transferred to the newer immigrant groups from eastern and southern Europe that had been entering the country since just before the turn of the century.[7] That nativism was especially felt in Kansas, where the population was made up mostly of Americans from older immigrant groups like the English, Scottish, Irish, and Scandinavians. One exception to the predominance of older immigrant groups was the coal fields, which had large numbers of Italians, Slavs, Russians, and other newer immigrants, who came to the state to work in the coal mines. Many Kansans looked upon that pocket of immigrants (called the Little Balkans) as a threat to American society, and the Court's report on the coal industry echoed that view.[8] The Court speculated that the immigrant miners were ". . . not only violators of economic laws but statutory [laws] as well." This may have been a reference to the large amount of bootlegging that went on in the coal fields, but the Court would not go so far as to specify what laws the immigrants were violating. The Court also claimed that the American miners, who were in the minority, were willing to work under a reformed system of mining; therefore, by default, the immigrant miners were responsible for perpetuating what the Court considered to be unfavorable mining conditions. The Court's solution was to Americanize the foreign

miners and force them to accept contracts ". . . that other American workmen are willing and content to work under."[9]

By laying most of the blame on the miners for the conditions of the Kansas coal fields, the Court tended to overlook the role of the operators and retailers. For the Court the main fault of the operators was their submission to the miners. However, the Court's investigation also revealed some evidence that the mining companies were working together to fix prices. Most of the land devoted to mining was owned by a few companies, which were either owned or controlled by railroad companies. A portion of the land was mined by the companies that owned them, and the rest was leased to other companies. Those companies would also mine a portion of the land, and lease the rest to another company. The smaller mining companies, called "dinky mines," would usually sell their coal to the larger companies who maintained their own sales departments.[10] There were about 15 sales departments, all of which were located in Kansas City, Missouri, and organized together into the Southwest Coal Bureau. The Bureau effectively controlled coal prices in Kansas while operating in Missouri, beyond the control of Kansas regulations. In its investigation, the Court found that the secretary of the Southwest Coal Bureau issued regular reports to all bureau members on the amount and prices of all the coal sold by all the members. As a result, the prices of coal in Kansas were fairly consistent from company to company. When the Court tried to investigate the bureau, the secretary informed them that the bureau had dissolved and destroyed its records. However, it was found that the organization still existed as the Kansas City Wholesalers Coal Bureau, providing the same basic services to the various sales

departments, but as a private company. In spite of this, the Court did not pursue the matter, because all of the sales departments were in Missouri and outside the Court's jurisdiction.[11]

Although the Court was quick to find fault with the contract between the miners and the operators, there was little it could do about it because it was endorsed by the Federal Bituminous Coal Commission. However, the Court did institute three basic changes to the contract between the miners and the mine operators. The first change was a limitation of the check-off system. The Court felt the check-off system was dangerous, because it gave the union leaders absolute control over the funds. Since the union dues and fines were deducted out of the miners' wages, the miners could not control how the money was used. The Court found it particularly disturbing that some of the funds collected using the check-off system were used to aid in the legal defense of socialists like Eugene Debs, who had been jailed for his opposition to the war. However, since both the operators and the union favored the system, the Court could not completely eliminate it. Instead, the Court ordered the union to report how its funds were spent. The second change was in reference to pit supplies. When the Federal Bituminous Coal Commission had settled the 1919 strike, one point that it had not been able to resolve was the price the mine companies would charge its miners for the purchase of supplies like explosives and other equipment. As a result, the Industrial Court decided to freeze the cost of pit supplies at their pre-strike level until both sides could come to an agreement. The final change to the mining contract was the issue of wage advances. Miners were paid twice a month, but they could request a wage advance at other times during the month. However, the

companies deducted a processing fee of approximately 10% of the wage advance. The Court ordered that the deduction taken by companies for wage advances would not exceed 2% of the wage advance.[12]

The Court's investigation into the conditions in the Kansas coal fields was also the beginning of a duel between Alexander Howat and the Industrial Court that would last several years. For Howat, the district president of the UMW, any denial of the right to strike was a threat to the UMW, and therefore unacceptable. In March 1920, during District 14's annual convention, Howat pledged himself and the district to fight the Industrial Court Act. To this end, Howat proposed, and the convention adopted, a by-law placing a $50.00 fine on any member of the union who brought a case before the Industrial Court. The fine for any officer who brought a case before the Industrial Court was $5000.[13] Howat also began threatening to call strikes in opposition to the Industrial Court.[14]

In April, Howat got his first chance to oppose the Industrial Court Act. When the Court held a hearing in Pittsburg, as part of its investigation of the coal industry, Howat, August Dorchy, the district's vice-president, Thomas Harvey, the secretary-treasurer, and Robert Foster, the auditor, were subpoenaed to give testimony.[15] However, Howat, and the rest of the district board, denied the authority of the Court and refused to attend.[16] The Industrial Court called upon Judge Andrew Curran of the Crawford County District Court to hold Howat and the other members of the district board in contempt. Curran, a supporter of Allen and the Industrial Court, was quick to comply. Responding to the charge, Howat maintained that the Industrial Court was illegal and did not exist.

According to Howat, the Court had no right to conduct investigations, issue subpoenas, or hold individuals in contempt.[17] However, these arguments did not impress Curran, and he found Howat and the district board in contempt. They were sentenced to prison until they submitted to questioning by the Court. Immediately after the sentencing, most of the miners in the district went on strike to support their leader. Curran placed an injunction on the strike, and ordered Howat to send the miners back to work. Howat refused on the grounds that he had not called the strike. However, the leaders of the strike called it off for fear that it would damage Howat's case. Soon after their imprisonment, Howat and the others were released pending an appeal to the Kansas Supreme Court.[18]

Howat's case before the state Supreme Court was poorly organized. The case was originally based on proving the Industrial Court Act unconstitutional. However, a member of his legal team questioned the possibility of arguing against the Court's constitutionality in the case, so in June Howat's attorneys requested and were granted a motion to withdraw their answer. Several weeks later, another member of the legal team expressed the view that Howat's case was ideal for challenging the constitutionality of the Industrial Court Act. As a result, Howat's attorneys resubmitted their original answer. The attorneys then requested several extensions, all of which were denied. Finally, when the case came up for hearing, Howat's legal team chose not to have oral testimony.[19]

The Kansas Supreme Court upheld Curran's contempt ruling. In making their ruling the Supreme Court pointed out that most of the defendants' case revolved around the validity of the Industrial Court Act to create the Industrial Court. However the Supreme Court maintained that the validity of the Industrial Court Act had no baring on

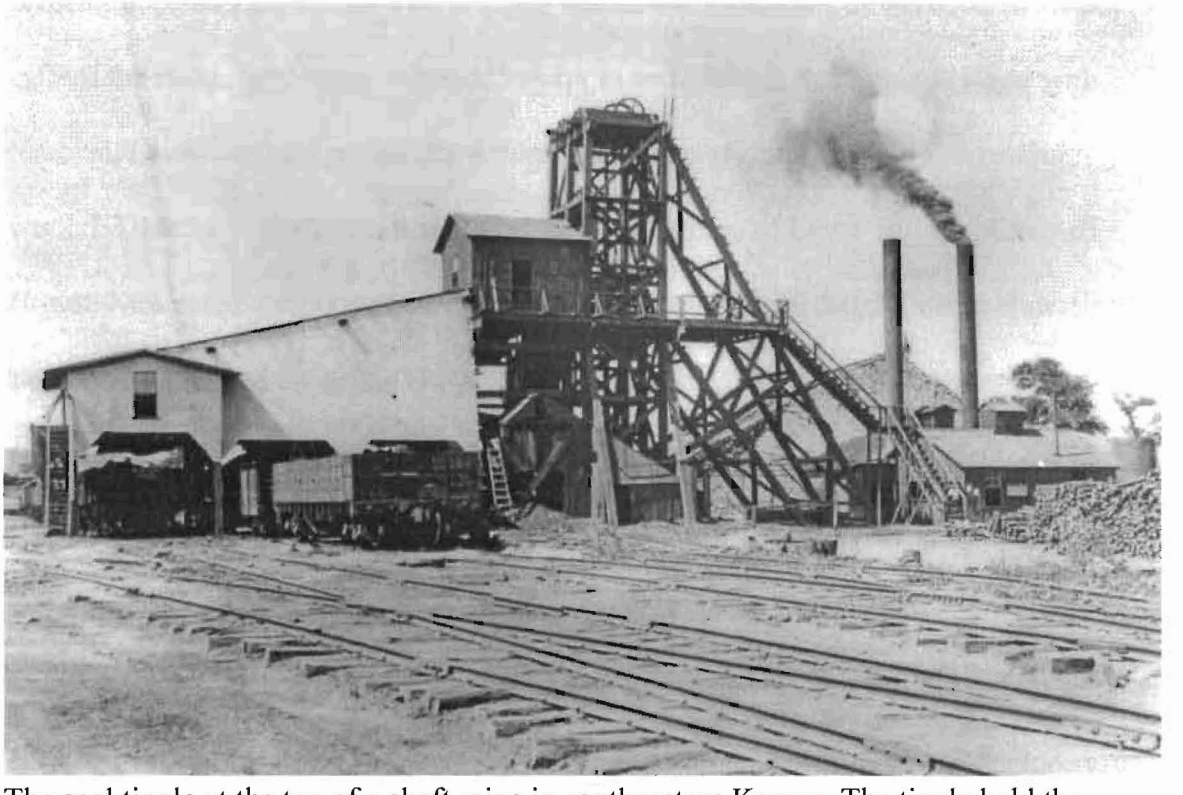
the case, and therefore rejected it as an argument for the rejection of the contempt ruling. For the Supreme Court, the bearing of the case was whether or not Howat violated the law, not its constitutionality. Even if part of the act was found to be unconstitutional, a section of the act stated that the rest of the act was still constitutional. Therefore, even if Howat's attorneys could prove that parts of the act were unconstitutional, Howat was still accountable for violating it.[20] Unperturbed by his loss in the state Supreme Court, Howat moved to have his case brought before the United States Supreme Court. The US Supreme Court, however, dismissed the case on the grounds that there was no Federal legal issue involved. Like the Kansas Supreme Court, the US Supreme Court stated that Howat's case had little to do with the constitutionality of the Industrial Court Act, and that, regardless of that Court's validity, subpoenas had to be obeyed.[21]

Despite Howat's failures, the conflicts in the Kansas coal fields only deepened. In June, Kansas miners began to refuse to work on Saturdays. The summer of 1920 had seen a significant railroad car shortage for many mid-western states.[22] None of the mines in southeastern Kansas had coal storage facilities, and the coal had to be loaded directly into boxcars.[23] If there were no cars present, the miners did not work. By invoking the "Saturday holiday" movement, the miners hoped that cars would build up at the mines over the weekend, and ensure steady work for the rest of the week. However, the miners' contracts still contained the penalty clause that had helped to precipitate the 1919 strike, and several mine operators began fining their miners a dollar for every Saturday they missed.[24] This served only to anger the miners, who went out on strike in July. There was a great deal of talk by the governor and the Court about taking some action in the case,

but nothing came of it. There was no shortage of coal, and thus no threat to the public. Further, the miners and operators agreed to submit their case to the international officers of the UMW.[25]

In submitting their case to the international leaders, the miners exposed a power struggle between Howat and the UMW's international president John L. Lewis. Howat and Lewis were representative of two different types of UMW leadership. Howat had gained his position in District 14 through cultivating grass-roots support of the district's miners and winning elections. Lewis, on the other hand, worked his way up through the international's bureaucracy by ingratiating himself to the most successful UMW leaders and gaining appointments to key positions. With the outbreak of World War I the UMW's international president, John White, was appointed to the Federal Fuel Board. The presidency of the UMW devolved onto vice-president Frank Hayes. Lewis, then a UMW negotiator, was appointed as the new vice-president. In 1918, Lewis won election for a full term as vice-president. It was his first successful election outside his old union local in Illinois. Lewis was not the vice-president for long. In 1920, Hayes, a chronic alcoholic, resigned, and Lewis became the international president of the UMW. Lewis would remain international president of the UMW for forty years [26]

Lewis's power resided in the bureaucracy of the international UMW. As a result, he tended to advocate centralized control of a union that prided itself on its autonomy. This centralized control, along with his lack of rank-and-file support, angered many district leaders like Howat.[27] The conflict over the invocation of the penalty clause was a classic demonstration of the warring principals within the UMW. Howat, with his power



The coal tipple at the top of a shaft mine in southeastern Kansas. The tipple held the mine's hoisting and grading equipment. The Industrial Court blamed the economic problems within the mining industry on mining methods, the ethnicity of miners, and the UMW (Courtesy of the KSHS).

base among his district's miners, backed their right to strike to recover their penalized wages. Lewis, who advocated strict adherence to contracts as a means of gaining public approval, saw the Saturday holiday movement, and the subsequent strike against the invocation penalty clause, as a violation of the UMW's contract. Lewis ordered Howat to call off the strike, but Howat refused.[28] After unsuccessfully threatening Howat with removal, Lewis sent orders directly to local presidents within District 14 to resume work.[29] District 14 itself was divided between supporters of Lewis and supporters of Howat. Miners who supported Lewis went back to work immediately, while Howat's supporters remained on strike. However, by the end of August, the car shortage had passed, and all miners were back at work.[30]

In spite of the overwhelming opposition by most miners to the Industrial Court, some specific groups of mine workers who opposed Howat did look to the Industrial Court for support. The UMW encompassed all mine laborers, not just the miners who extracted the coal. Among these other mine workers were shot-firers, hoist engineers, and fire bosses, who, although members of the UMW, had jobs which required licenses from the state mine inspector. In District 14, these groups were often at odds with the policies of the miners and the union leadership that supported them. In April 1920, a group of 218 shot-firers brought a case against the Southwestern Coal Operators Association for a wage increase. The shot-firers had initially used the UMW's dispute settlement system to try and resolve the conflict. However, neither Howat nor the international leadership would support the shot-firers' claims for higher wages. As a result, the shot-firers had

turned to the Industrial Court for help. Although the case was eventually settled without the Court's help, the shot-firers blamed Howat for not supporting them more fully.[31]

Another case of mine workers using the Industrial Court came a year later. In February 1921, John McAllister and William Dixon, fire bosses for the Crowe Mining Company, brought a case before the Court claiming that they had been wrongly discharged. Again opposition to Howat played a large role in the case. A fire boss was responsible for making sure the mine was free of gas and safe to work in. If a fire boss felt that the mine was too dangerous to work in, he had the right to shut down the mine and send the miners home. Because of this power, the fire bosses, like the shot-firers, had to be licensed by the Mine Inspection Board. According to McAllister and Dixon, the miners with whom they worked had demanded their discharge because they had refused to observe the Saturday holiday policy. The mine superintendent had fired them rather than deal with the hostile miners. According to the fire bosses the superintendent had justified his actions by falsely claiming that McAllister and Dixon had not been doing their job properly and had endangered the lives of the miners. The fire bosses further claimed that Howat had orchestrated their removal.[32] For its part, the company claimed that Howat had no part in the decision to discharge the fire bosses, and claimed that the fire bosses had not done their job properly. The mining company claimed that prior to their removal the fire bosses had failed to notice a malfunction in the ventilation system that had caused the mine to fill with gas. Several miners also claimed that the fire bosses had threatened several of them for not lying to cover their mistake. The company also

stated that they had offered both McAllister and Dixon jobs as miners, but they had refused.[33]

There was no evidence that proved either case, and both stories were plausible. McAllister, besides being a fire boss, had also run unsuccessfully against Howat for the district presidency. As a result, each had cause to discredit the other. Howat could have used the miners dislike for the fire bosses, caused by their refusal to respect the Saturday holiday, to convince the miners to agitate for the fire bosses' removal.[34] On the other hand, McAllister and Dixon may have been poor fire bosses, and McAllister's blaming of Howat may have simply been an attempt to play on the Industrial Court's dislike of Howat. In any event, the Court determined that it had no jurisdiction because no conflict existed between the company and the union, and it had no jurisdiction in conflicts between a union and its members.[35]

In spite of such internal challenges to his authority, Howat's opposition to the Industrial Court continued. His next attempt to discredit the Industrial Court came in February 1921 during the Mishmash strike. Although the strike had been called over the issue of back wages for a miner, it was readily apparent that the Mishmash strike was in fact the one that Howat had been threatening to call as a challenge to the Industrial Court. The curious name for the strike came from Carl Mishmash, a young man who had worked in the mines of the Mackie Fuel Company since he was a child. In 1918, Mishmash had informed his supervisor that he was 19, an adult by the terms of the UMW's contract, and due an adult's wage. The company granted him the wage increase from that point on, but Mishmash maintained that he had turned 19 a year earlier and felt he was due back

wages.[36] The Mishmash family Bible, in which all births were recorded, only served to confuse the issue. According to the Bible, Carl Mishmash was born in both 1898 and 1899. The company maintained that the second date was the accurate one, and thus they did not owe him back wages. Mishmash, however, claimed the first date was accurate, and thus he was due a year's worth of adult wages. Local records could not confirm either view. Various school records indicated that Mishmash had been born in 1898, 1899, and 1900.[37] However, the Joint Board of union representatives and mine operators, which settled disputes, determined that Mishmash was born in 1898, and was due back wages.[38] The Mackie Fuel Company contested the ruling, and refused to pay the back wages. At this point, the union let the matter drop, and no attempt was made to force the issue.[39]

In February 1921, Howat resurrected the wage issue as a means of challenging the Industrial Court. In early February, Howat ordered the 200 miners at mines "H" and "J" of the Mackie Fuel Company in Crawford and Cherokee counties to strike.[40] The Court was not eager to get involved in the dispute as it seemed to be a case for small claims court. However, the strike, although it was only in two mines, compelled the Industrial Court to intervene on the basis that the strike could escalate. The Court also had difficulty in determining Mishmash's date of birth. Neither the midwife who had delivered Mishmash, nor Mishmash's godfather could remember the year he was born. Even after signing an affidavit that her son was born in 1898, Mishmash's mother was uncertain if it was the correct year. The godfather did note that at Mishmash's baptism several Austrian miners had discussed the assassination of the empress of Austria. The Court determined that the empress of Austria had been assassinated in 1898. Mishmash's case was further

strengthened by the fact that the year prior to his demand for an adult's pay he had been moved from a job normally done by boys to a job done by an adult, so even if the company did not pay him adult wages they considered him an adult worker. Mishmash was thus awarded over $200 in back wages plus interest.[41]

It was readily apparent that Howat's actions in calling the strike had more to do with his ongoing feud with the Industrial Court than Mishmash's welfare. The issue of Mishmash's back wages had existed for three years, but had not attracted Howat's attention until the Industrial Court was created. Further evidence that the strike had little to do with Mishmash was the inability of all sides to clearly identify him in their records. The affidavit of Mishmash's date of birth, signed by his mother and witnessed by a notary public in 1919, gives Mishmash's first name as Carl.[42] However, in the letter to the Mackie Fuel Company, in which the company was informed of the determination of the Joint Board, Mishmash is referred to as Charles Mishmash.[43] Moreover, in 1921, when Howat issued the strike order, it was in support of Earl Mishmash.[44] Various Court documents refer to Mishmash as Carl Mishmash, Karl Mishmash, and Earl Mishmash.[45] The fact that little notice was taken of the inconsistent use of names would seem to indicate that Mishmash was not the main issue of the strike. Also, throughout the strike and the subsequent investigation, no one knew where Mishmash was. Mishmash had actually quit the Mackie Fuel Company a year and a half earlier and left Kansas for points unknown.[46]

Howat pressed his attack on the Industrial Court further in the matter of issuing Mishmash's back wages. Because no one knew where Mishmash was, it was decided that

the check for the wages would be held by the clerk of the Crawford County District Court.[47] When Mishmash was located, he could go to the Court House and collect his wages. When Mishmash returned from Oklahoma, where he had been working, Howat refused to allow him to go to the Court House to get his wages. Instead Howat sent him to the office of the Mackie Fuel Company to demand his back wages. No doubt in an effort to resolve the conflict and get their miners back to work, the company paid Mishmash when he came to their office. However, Mishmash, acting on Howat's advice, would not accept all the money that had been awarded him. The Court's wage award had not only included Mishmash's back wages but also interest. Mishmash chose to accept the back wages without the interest. In the issue of back wages the UMW's contract did not allow for interest.[48] By adhering to union's by-laws over the Court's order Howat once again denied the Court's authority. The company, after paying Mishmash, went to the District Court to get their original check back, but the clerk, who was a stickler for procedure, would not give it to them until the company got permission from the Industrial Court. The company then had to go through the time-consuming process of contacting Huggins, explaining the situation, and getting him to authorize the release of their check.[49]

Although Huggins had initially blamed both the company and the union for the problem, after Howat's actions, he was more than ready to blame Howat. In a letter to the Mackie Fuel Company's attorney, Huggins expressed amazement at Howat's actions. "Isn't Howat's position in this matter the most childish thing you ever heard of for a grown man?"[50] However, when considered from his perspective, Howat's actions were fairly logical. If Howat had sent Mishmash to the Court House, as ordered by the

Industrial Court, he would have been acknowledging the Industrial Court's authority. This would have defeated the whole purpose of the strike, which was to discredit the Industrial Court. By sending Mishmash to the company to collect his pay without the interest, Howat was able to get Mishmash his money without acknowledging the power of the Court.

Even after the Mishmash strike was settled there was still the matter of Howat's violation of the injunction and the anti-strike clause. Judge Curran, upon the request of the Industrial Court, heard two cases against Howat for his role in the Mishmash strike. The first was a charge of contempt for violating the strike injunction against the miners. This charge was against both Howat and the other members of the district board. The second was a criminal charge alleging that Howat and August Dorchy had used their influence as leaders of District 14 to hinder production. In answer to the charges, Howat claimed that he believed that the injunction and anti-strike clause of the Industrial Court Act only applied to strikes that occurred throughout the coal fields and not just at two mines. He further claimed that the miners had been forced to strike by the operators who had refused to grant Mishmash his back wages.[51] In spite of this defense, Howat was found guilty on both charges. For the contempt charge, he and all but two of the members of the district board, were sentenced to serve one year in prison. For the criminal charges, he and Dorchy were sentenced to six months in prison. Howat was also informed that if he wished to appeal the rulings he would have to put up a bond of $2000. Howat spent several additional months in jail because he refused to pay the bond.[52]

After he relented and paid the bond, he appealed his cases to the Kansas Supreme Court. In the appeal, Howat challenged the legality of the injunction, he also claimed that he had been denied a trial by jury during his contempt case, and, of course, that the Industrial Court was unconstitutional. As in the verdict of Howat's first case before the Kansas Supreme Court, Judge Curran's initial ruling was upheld. Supreme Court Judge Burch, in issuing the Court's opinion, stated that the injunction issued by Judge Curran was in accordance with the 1915 law permitting injunctions. He further stated that because the hearing on the contempt case was an arraignment instead of a trial, Howat did not have a right to a jury trial. On the issue of the Industrial Court's constitutionality, Burch stated that "the act creating the court of industrial relations is a reasonable and valid exercise of the police power of the state . . ." Burch's answer also included a long diatribe comparing the Mishmash strike to various other supposed excesses of the labor movement nationwide, which he referred to as "petty exhibitions of arbitrary power . . ." After that resounding defeat, Howat appealed the case to the U.S. Supreme Court, where it was thrown out, like his first appeal, on the grounds that there was no Federal issue involved.[53]

Howat's legal defeat did little to dissuade his determination to destroy the Industrial Court. In an effort to turn public opinion against the Court and raise funds for District 14, Howat began writing a book on the Industrial Court. Working with several local writers and publishers, Howat's book, *The Industrial Slave Law of Kansas,* was intended to trace the history of the Industrial Court starting with the 1919 coal strike. The book had a decidedly pro-UMW character. An outline of the book, taken from a

promotional broadside, portrayed Allen as a political opportunist seeking ". . . to rise to national fame by crucifying labor." Unfortunately, Howat could not raise the funds to publish the book and the idea was abandoned.[54]

Howat also began calling strikes again, in a further effort to discredit the Court. Among these was the Spencer-Newlands strike. In mid September, about two weeks before he began his jail sentence, Howat ordered the miners of two Spencer-Newlands mines out on strike. Again the issue was wages. A blacksmith at one of the mines felt that he was not being paid at the correct rate for all of the time that he worked. This time, though, the Industrial Court did not take the bait. Huggins stated that there was no shortage of coal and therefore no reason to act. In response, Howat chastised the Court for its hypocrisy for intervening in the Mishmash strike but not in the Spencer-Newlands strike. Howat claimed that the strike at the Spencer-Newlands mines was larger than the Mishmash strike, and that a larger amount of coal was involved. He also pointed out that the Mishmash strike had come in the spring when the demand for coal was at its lowest, and the Spencer-Newlands strike came in the fall when the demand for coal was at its highest. The strike itself was eventually resolved by a single conference between Howat and the mine owners.[55]

The day after the Spencer-Newlands strike ended, Howat once again found himself embroiled in internal UMW politics. While the Spencer-Newlands strike was in progress, the UMW was holding its International Convention in Indianapolis. Besides promoting his usual program of no wage reductions for miners, Lewis also took time to condemn his major opponents. He chastised Robert Harlen, president of District 10 in

Washington state, and Frank Farrington, president of District 12 in Illinois, as political opportunists spreading lies about the UMW and its president. However, the brunt of Lewis's invective was reserved for Howat. According to Lewis, Howat was damaging the credibility of the UMW by calling unauthorized strikes. Lewis asked for the support of the convention in forcing Howat's compliance with the International Board's orders to cease striking.[56] For his part, Howat accused Lewis and the rest of the International Board of being allied with the mine operators.[57] Debate over Howat's actions raged for four days, with regular verbal clashes between Lewis and Howat. Finally, on September 26, all debate on the issue was ended and a vote called to determine whether or not the convention would order Howat to obey the International Board.[58] Howat lost the vote by a significant margin, gaining the support of only six districts including his own. In spite of this vote, Howat informed the convention that he would not obey the International Board's order to refrain from unauthorized strikes.[59]

Although Lewis's actions were motivated by the wish to maintain the UMW's bargaining position in the face of increased hostility on the part of mine operators, there were other underlying reasons for Lewis's animosity towards Howat. Many of Lewis's opponents, such as Harlen, Farrington, and John Brophy, president of District 2 in Pennsylvania, saw Howat as a potential challenger to Lewis in the next election.[60] Many, both within the union and outside of it, saw Lewis's attacks on Howat as simply an effort to discredit a rival. One Pittsburg resident told William Huggins that many miners ". . . are firmly of the belief that Howat will be either Lewis's successor or that he may run some one of the national officers a race within the next two or three years."[61]

With the convention's indorsement of Lewis, it was only a matter of time before Howat would be ousted as District 14's president. On the last day of September, Howat, Dorchy, and the other convicted members of the district board began serving the jail sentences for their wide array of violations of the Industrial Court Act. John Fleming, a member of the union's District Board who had escaped conviction, was elevated to the position of provisional district president, and a new provisional district board was created.[62] Although a new governing body had been created for District 14, it was clear that the new leaders, as well as the majority of the district's miners, still looked upon Howat as the true leader of the district. In support of their imprisoned leaders, miners across the Kansas coal fields quit work in what was called the "Howat" strike. Although Howat had not called the strike, it was the excuse Lewis needed to suspend Howat.[63] On October 13, the International Board took charge of District 14. Lewis appointed George Peck, the international representative in Kansas, as the provisional president of District 14. Thomas Harvey, the secretary-treasurer of District 14 under Howat, who had always been a dissenting voice on the district board, was made secretary-treasurer of the "new" board.[64] Lewis also sent Van A.Bittner, the international representative of the UMW in West Virginia, to Pittsburg to act as Lewis's special representative in Kansas.[65] Lewis then issued an order to all Kansas miners to resume working.[66] About 1500 miners, many from Cherokee County, complied with Lewis's order and returned to work.[67] However, the majority of the miners remained on strike.[68] On October 19, Bittner and Peck issued a proclamation stating that all locals who did not return to work by November 16 would have their charters revoked.[69] On November 17, the new district officers made their final

board refused to relinquish control.[76] The old board had the support of Howat and the other imprisoned UMW leaders, as well as the majority of the district's miners, but how long they could keep their support in the face of unemployment was questionable.

The striking miners could also get some support from other sources. In late October, other Kansas unions, who opposed the Industrial Court collected funds, which they used to purchase two rail cars full of food for the striking miners.[77] The strikers could also get some support from Frank Farrington, head of the Illinois district of the UMW. Though most of the UMW's districts had sided firmly with Lewis, the Illinois district continued to give moral and financial support to the striking miners.[78] However, there was a limit to the amount of support Illinois would give. Not all of the locals within Farrington's district were willing to support a group of miners who had been labeled as traitors by the International Board.[79] Farrington himself could only give so much support. Lewis threatened Farrington with removal if he did not cut off his support of the striking Kansas miners.[80] Also, the Illinois district, like many other UMW districts, was on the verge of going on strike themselves. By the end of 1921, mine operators throughout the United States began to threaten wage cuts. Since the UMW was against a wage reduction of any kind, the possibility of a strike seemed ever more likely.[81] If a nationwide strike did break out, the Illinois district would need its money to support its own members.

The Howat supporters were also able to retain control of the *Workers Chronicle*, the official newspaper of the UMW in District 14. In the weeks leading up to and immediately following the district's split, the *Workers Chronicle* acted as the voice of the striking miners. Howat used the *Chronicle* as a means of expressing his views to the

district's miners. "The Mine Workers of District 14, have fought and suffered and struggled for years in trying to improve and better their conditions, and I do not propose to agree that the suffering and struggles of the past shall be in vain."[82] The *Chronicle* also published the letters of the miners themselves, and provided an outlet for the animosity they felt. The main focal point of that animosity was Lewis's apparent betrayal of the strikers. In a letter to the paper, a local secretary accused Lewis of being in league with the mine operators and of having rigged the convention vote that had condemned Howat's actions.[83]

The most important advantage of the Howat supporters, in their fight against the International Board, was the support of the district's attorneys Phil Callery and Redmond Brennan. The day after the International Board's takeover of the district, Callery informed the local banks to only accept checks from the old board.[84] On December 5, Brennan went to the federal district court in Kansas City, Missouri, requested and received a temporary injunction against the suspension of the district.[85] However, this was of limited help to the dissident miners. In a later hearing on the injunction, the International Board made the case that Howat had failed to use the proper channels for settling a dispute within the UMW, and had no right to an injunction. Based on this finding, and the fact that the striking miners were in defiance of the Industrial Court Act, Judge Samuel Dew refused to extend the injunction beyond January 14.[86]

Throughout the first months of the strike, the state's position was rather ambiguous. Several days after the Howat strike began, the governor assured the public that the Industrial Court was prepared to take action in the event of a prolonged strike.

Allen reported that the state was already making preparations to take over the mines as had been done in 1919.[87] However, when the International Board took over the district, Allen informed the public that the Industrial Court would take no action in the conflict.[88] The Industrial Court's judges even found themselves divided on the appropriate action to take. Huggins, in the belief that most of the miners wanted to work, felt that the Industrial Court should suppress the strike which had been caused by Howat, whom Huggins described as a Soviet-style dictator.[89] When questioned on the same issue, the *Topeka State Journal* described James McDermott's response as ". . . very brief, rather meaningless and quite lacking in detail . . ."[90] McDermott's tight-lipped reaction to reporters was due to his belief that no action should be taken by the Industrial Court in the strike. In the end McDermott and Crawford once again overruled Huggins, and chose not to take any direct action in the strike. This position was motivated partially by the fact that there was a glut of coal on the market, so there was no threat to the public. Many in the government also felt that Lewis and the International Board would eliminate Howat with a minimal amount of state involvement.[91]

Although the Industrial Court took no action during the strike, the government did not completely ignore the striking miners. The Federal government chose the moment of the strike to tighten controls on immigrants and bootlegging within the Kansas coal fields. In early November, U.S. District Attorney Al F. Williams went to Pittsburg to investigate any illegal action by immigrants taking part in the Howat strike. Although Williams denied any connection between his investigation and the conflict between the dissident miners and the International Board, he told the *Pittsburg Daily Headlight* that

Kansas Attorney-General Richard J. Hopkins prosecuted many cases and investigations before the Industrial Court during the Allen administration. He also utilized vagrancy ordinances to break coal strikes against the Industrial Court (Courtesy of the KSHS).

> It has been suggested to this department of justice that forces are at work here which are hostile to law and order . . . The department of justice will watch with particular interest the developments in this district in the next ten days.

The intention of the government to take some part in the miners' conflict was further reinforced by the visits of several members of the Immigration Service and the Department of Labor. Like Williams, these individuals would not comment on any link between their actions and the Howat strike, but it was clear to most of the community that the government was preparing for the possible deportation of any immigrant miners who violated the law during the strike.[92]

The way Federal agents worked to weaken the position of the striking miners, either intentionally or unintentionally, was to crack down on the bootlegging industry. During prohibition the distilling of illegal liquor was a major source of revenue in southeastern Kansas. In fact, southeastern Kansas was widely known for producing very high quality liquor in a state that had long considered itself the driest in the country.[93] Several factors led to the popularity of this illegal industry in southeastern Kansas. The large proportion of immigrants from southern and eastern Europe living in the coal fields did not look upon drinking as particularly detrimental. As a result, few felt any need to comply with the laws. Also, bootlegging was an important source of funds for many families. In southeastern Kansas the only major work for laborers was the mining industry. Mining, with its low wages and unpredictable work schedules, often did not provide the necessary money to support a family. Bootlegging served to augment the wages of local miners especially in times of strikes.[94] In fact, bootlegging and mining

were so closely tied together that the term for bootlegged liquor in southeastern Kansas was Deep Shaft. A mine was an excellent place to hide a still.[95]

However, in mid-November the Federal authorities began sweeping the coal fields for immigrant bootleggers. These sweeps were led by the new Federal Prohibition Officer, George H. Wark, the former Industrial Court judge. Wark's agents arrested a total of 19 men and destroyed 15,000 gallons of liquor. Again, although there was no clear connection between the crackdown on bootleggers and the strike, it was believed by both sides in the conflict that the action was taken to deprive striking miners of a source of income, thereby pressing them to bring the strike to an end.[96]

As the strike progressed, the dissident miners began to take action against the Lewis supporters and the mines in which they worked. In late October, striking miners began marching to various mines in the community to try to convince the strikebreakers to quite work. Most of these actions were peaceful and unsuccessful. In one case, 37 strikers marched to a strip mine south of Scammon. However, before they could begin demonstrating, Cherokee County Sheriff William Harvey arrived, and ordered the strikers to disperse, which they did.[97] A similar event occurred a few days later at the Dean Coal and Mining Company's strip-mine near Mulberry, in Crawford County. Once again, a sheriff appeared and disbursed the strikers without incident.[98] Not all of the strikers' actions were so benign. On November 7, some unknown individual or individuals stole several cases of dynamite from a magazine of the Sheridan Coal Company. The dynamite was later used to destroy a shaft mine of the Burgess Coal Company. The blast did a massive amount of damage, destroying the coal tipple, the hoisting equipment, and

collapsing the mine all the way to the coal face.[99] Early one morning in early December, William Mullekin, a fire boss at the Central Coal and Coke Company, was shot in the back while driving to work. Fortunately for Mullekin, he was not seriously injured and was able to escape in his car. The strikers had selected Mullekin for retribution because he had been a Kansas delegate to the International Convention where he had voted against Howat.[100]

The Lewis supporters also committed their fair share of questionable acts during the strike. In an effort to discredit the strikers' attorney, Phil Callery, Bittner and Peck issued a statement that Callery had actually been a supporter of the Industrial Court Act. In response, Callery issued a statement condemning the ". . . dishonorable methods which have been pursued by the international representatives since they first made their malicious assault on the miners of District 14 . . ." The Lewis supports did not limit their actions to spreading propaganda. In late October, someone broke into Callery's office and rifled through his files. As a result, Callery and the members of the old district board had to change the locks on their offices.[101]

In early December the Howat strike entered its final and most dramatic phase. On December 11, approximately 500 women assembled in Franklin. These women were the wives and children of the striking miners, who had decided to take matters into their own hands. Up to that point the strike had been a strictly male affair. However, as in all strikes, the families of the striking miners suffered. The women meeting in Franklin issued a statement declaring their duty to stand by the striking miners. Like the strikers, the women condemned the Industrial Court and John L. Lewis for provoking the strike.

The next morning, the women put their condemnation into action. Gathering in Franklin, 3000 women marched to a mine of the Jackson-Walker Company. Along the way they turned back all the miners on their way to work. When they reached the mine, they called upon the workers already there to quit. There were some reports that the women threw pepper at some of the miners.[102] The next day, similar marches occurred at five other mines around Franklin.[103] The second day of marches proved to be more violent. The women were accused of destroying cars, attacking miners, and throwing rocks and other projectiles. On the third and final day of the march, the women went to only one mine because several of the mines they had intended to target had shut down. On the same day, a steam shovel was blown up, although it was unclear by whom.[104]

Public reaction to the women's march (dubbed the Amazon Army) was one of shock. In participating in the strike, the women had defied a major social convention. Women in the 1920s were expected to restrict their activities to the sphere of the home and other related concerns. This was especially true of the women in mining camps, who were stereotypically seen by the mine owners as a conservative and anti-strike force within the family.[105] At first the public thought was that the women participating in the strike had been put up to it by the striking miners. Bittner issued a statement that Howat had ordered the women to march as a last attempt to win the strike.[106] However, even the leaders of the dissident miners were shocked by the women's actions. Callery fiercely denied that the women's march had been authorized by the striking miners, and expressed the hope that the women would use better judgement in their attempts to help the strikers.[107] Although the striking miners had been aware of the women's action, the

socialist *Appeal to Reason* and the *Workers Chronicle* stressed that the women had been acting alone.[108]

Another reaction was that the women were dangerous radicals. Various newspapers, both in the state and outside the state, attributed the actions of the women to the influences of socialism.[109] Although southeastern Kansas was the center of socialist activity within the state, there is some question as to socialism's effect on either the miners or the women marchers. Undoubtably the *Appeal to Reason,* which was published in Girard, the county seat of Crawford County, had some influence on the miners, but socialism in southeastern Kansas, as in the rest of the country, was on the wane. At the turn of the century, Girard had been a focal point for many socialists. J. A. Wayland, the *Appeal's* first owner, had entertained a wide assortment of famous socialists at his house in Girard. However, those days had passed. Wartime imprisonment of radicals had left the movement in tatters. The *Appeal to Reason,* once the nation's largest socialist newspaper, was in decline. In fact not long after the Howat strike the *Appeal to Reason* ceased to exist. Consequently, the accusation that the women marchers' were socialist radicals had more to do with public antagonism than reality.[110]

One of the major debates about the marching women was the level of violence they used. The *Appeal to Reason* and the *Workers Chronicle* portrayed the marches as being fairly peaceful. These newspapers characterized the women's actions as simply an expression of democracy. However, the mainstream press of Kansas sensationalized the violent actions of the marches and emphasized the supposed radical motivations of the immigrant women.[111]

On the third day of the marches, the Crawford County Sheriff, at a loss to control the marching women, called upon the state to aid in the protection of the miners. The Kansas government, which had so little involvement in the strike up to that point, immediately dispatched three troops of Kansas National Guard cavalry to the district to suppress the women marchers. However, by the time the soldiers arrived, the marches had ceased, and all that was left for the Kansas National Guard was to round up the marchers. Authorities arrested 49 women, and charged them with a variety of crimes from unlawful assembly to assault. The actions of the women had raised great concern among the local authorities, who set the women's bail almost four times higher than the typical bail for such offences.[112]

Although Phil Callery agreed to represent the women during their trials, the women ended up pled guilty to all the charges. However, Callery called for leniency in sentencing the women. According to Callery, the women had been simply acting in defense of their homes as any good wife or mother would do. He also pointed out that severe sentences would only increase the divisiveness of the district. The courts apparently agreed. Most of the women were fined between $100 and $200 plus court costs and paroled.[113]

Regardless of the public's surprise at women marching in support of striking miners, the actions of the "amazon army" were not without precedent. Women had been participating in mining strikes for years. Women marchers had participated in the violent mining strikes in Colorado prior to World War I. Mary Jones (better known as Mother Jones) was well known for her tenacity as a UMW organizer.[114]

The women's marches were the last major acts of the strike. Although the strike continued into mid-January, it had become apparent that the strikers had lost. Richard Hopkins, in a direct effort to break the strike, ordered that the 1917 Vagrancy Law would be strictly enforced within the coal fields. Vagrancy was loosely defined as anyone not working. Consequently, all striking miners had to find work or risk arrest. Without the ability to picket, and with the defeat of the injunction against the International Board's take over of the district, the striking miners had lost what little chance they had of success. On January 13, in a face-saving move, Howat declared victory. Claiming that the Industrial Court had been successfully discredited, Howat ordered the striking miners back to work. However, for many of the strikers, work was not available. Many mines refused to rehire the dissident miners. Those mines that would take back the striking miners would not rehire all of them, because the strikebreakers had filled their places. Even though the Howat strike was over, many of the dissident miners remained out of work.[115]

Although the state government, the mine operators, and the International Board of the UMW had tacitly supported each other to defeat Howat and his supporters, their alliance was by no means a permanent one. Two months after the Howat strike, the UMW was on the verge of a nationwide strike. Since late in 1920, mine operators throughout the Central Competitive Field (Illinois, Ohio, western Pennsylvania, and northern West Virginia) had been making a concerted effort to reverse the wartime gains of the UMW. These efforts often resulted in violent and bloody clashes between the hired thugs of the mine operators and the UMW miners.[116] These conflicts finally came to a head in the

spring of 1922 when the mine operators of the Central Competitive Field demanded that each company be allowed to sign a separate contract with its miners, which would allow them to cut wages and more easily break the union. The UMW had been using industry-wide contracts since the late 19th century, and were not going to surrender such a beneficial system. The operators and the UMW became deadlocked on the issue. As the Central Competitive Field set the standard for operations throughout the UMW, a strike in that field mean a nationwide strike. On April 1, 1922, 600,000 miners in both the anthracite and bituminous coal fields went on strike in what would prove to be one of the nation's largest coal strikes.[117]

In Kansas, as the threat of a nationwide coal strike had become more likely, the Industrial Court was once again divided on the action it should take. The Court's split was along fairly typical lines, with Huggins advocating quick intervention, and McDermott and Crawford taking a more careful approach. In March, Crawford began a private investigation to determine the amount of coal that was available in communities throughout the state. Crawford sent out surveys to the governments of various cities. The responses made it very clear that there was no danger of a coal shortage. Most cities had at least a month's supply of coal available, and some cities had as much as six months of coal on hand.[118] However, since the investigation had been undertaken without the formal consent of the Court, Huggins refused to accept Crawford's findings and ordered a formal investigation.[119] Randal Harvey was dispatched to southeastern Kansas to gather evidence on the impending strike.[120] Crawford contacted the department of labor, which confirmed his initial investigation that there was a surplus of coal in Kansas.[121] After

conducting the investigation, McDermott and Crawford, in an effort to avert the strike, issued an order in late March extending the Kansas miners' 1920 contract for another thirty days.[122]

Huggins, however, issued a dissenting opinion. In Huggins's view, the continuation of the miners' contract, for whatever reason, was ". . . to surrender the public rights to these great barons of labor and industry." Huggins's dissent summarized the findings of the 1920/1921 investigation of the coal industry, which had so strongly criticized the miners' contract. He also briefly listed all the conflicts between the state and the coal miners. Finally, after hinting that he had not been consulted before the order was issued, Huggins gave his solution to the situation in the coal fields. Huggins felt that:

> . . . an order [should] be issued authorizing a temporary cessation of the coal mining industry in the state of Kansas until April 15, 1922, demanding that the operators and miners agree, on or before that date upon a contract and method of mining which would be fair to the public . . .

If the miners and operators were unable to come to an agreement by April 15, the state should take over and run the mines.[123]

Disregarding the order issued by the Industrial Court, on April 1 the members of District 14 went on strike. Since the 1922 strike was not an isolated event, but rather a nationwide strike, the miners in Kansas felt obligated to support the strike for the sake of the rest of the UMW. Also, the district was still under the supervision of the International Board and led by loyal supporters of Lewis. As a result, the district would follow Lewis's order to strike, even if it was not in their best interest to do so. On the third day of the strike, McDermott and Crawford issued another order. Although they reaffirmed that the

1920 contract had been extended, they acknowledged that no emergency existed, and made no indication that the Court would take any other action.[124]

Once again Huggins disagreed with the Court's actions. Huggins had been the presiding judge of the Court for three years, and throughout that time the coal miners of Kansas had been a continual concern. Huggins felt that something had to be done to alleviate the situation permanently. After McDermott and Crawford issued their second order, Huggins issued a memorandum outlining his plan for stopping any further conflict in the coal fields. The memorandum reiterated all of the conflicts between the state and the miners, and the Court's apparent unwillingness to solve those problems. As a solution, Huggins advocated the creation of a special detachment of military police trained specifically for duty in the Kansas coal fields. He called upon the Court to aid mine operators in supplying strikebreakers in the event of a strike. Huggins' plan also called for the complete elimination of the UMW in Kansas.[125] In effect, Huggins wanted to completely subjugate the Kansas coal fields to the public good.

The strike continued throughout April with no action on the part of the Court. In mid-May, in an effort to start some production, the Court hinted that it might take over the mines. The mine operators reacted to this by attempting to open their mines. Smaller mines began operating cooperatively. A gang of strikebreakers would work in the mine and receive a predetermined wage for the coal they mined, which they divided among themselves as they saw fit. Larger mines also began operating intermittently. Ironically, many of the strikebreakers used in the mines were Howat supporters who were in desperate need of work. The rest of the strikebreakers were Lewis supporters who, after a

month and a half of striking, could no longer afford to be idle. Limited mining continued throughout the summer.[126] The Kansas coal fields were one of the only fields producing coal in the country, which created a problem. Coal "scalpers" began entering the state to purchase coal for industries in other states that could not get coal. Because of this, the Industrial Court stepped in to oversee the distribution of the coal and make sure it reached the Kansans who needed it.[127] However, not long after the Court had started supervising coal distribution, coal production abruptly stopped. By early August, the possibility of a mediated end to the strike had become likely. None of the working miners, Howat or Lewis supporters, wanted to be associated with strikebreaking, so in the closing days of the strike all operations in the Kansas coal fields once again stopped.[128]

The end of the 1922 strike was both a victory and a defeat for the UMW. The government, as in the 1919 coal strike, refused to aid the UMW, and without government support, the UMW had no hope of winning the strike. In early August 1922, the representatives of the UMW and the Central Competitive Field held a conference. The resulting agreement allowed the UMW to retain the 1920 wage scale, which Lewis hailed as a resounding victory. However that gain had come at a price. The union had to give up control of several areas of the Central Competitive Field along with what remained of the southern coal fields they had organized during the war.[129] For Kansas, the strike had given the Howat supporters a toehold in the district. They would spend the next eight years working to regain control of their union. In 1929, Howat would become the president of the short-lived Reorganized United Mine Workers of America, a rump

organization opposed to Lewis's control of the UMW.[130] However, the 1922 coal strike was the last major conflict between the coal industry and the Kansas Industrial Court.

From the Industrial Court's creation, Kansas coal miners had opposed it, none more strongly than Alexander Howat. For most of the Court's existence, Howat and the miners who supported him led a continuous struggle to discredit and destroy the Court. This effort was carried out through a series of largely unsuccessful strikes and court cases. The Industrial Court's role throughout the conflict was an inconsistent one. The conflicts with the miners split the Court between Huggins, who supported taking drastic measures against the miners, and McDermott and Crawford, who would only act against the miners in the event of a public emergency. The Court looked upon the miners of southeastern Kansas as radical foreigners who threatened the state's welfare, but it was often unwilling to take action against them.

The effectiveness of the miners' efforts against the Court was debatable. The miners' battle with the Industrial Court cost Howat his freedom and the presidency of District 14. For the miners who supported Howat, the repeated strikes brought suffering and eventually resulted in their expulsion from the union. For all their efforts, Howat and his supporters had no direct effect on defeating the Court. However, as opposition to the Court mounted in other areas, the miner's continued resistance began to symbolize the ineffectiveness of the Industrial Court. Henry Allen, and other Court supporters, had always maintained that when the labor movement had seen the benefits of the Industrial Court they would give up their opposition to it. However, the unreconcilable opposition of Kansas coal miners had proven this belief wrong.

Chapter 7

The Court in Decline

The decline of the Kansas Industrial Court became symptomatic of the collapse of progressivism nationwide. The Industrial Court had come into being as a progressive solution to labor unrest. However, in the face of post-war economic collapse, many saw the Industrial Court as a monetary burden for the state. This view, along with the US Supreme Court's rulings on the issue of public supervision of private industry, served to focus opposition to the Industrial Court. This opposition, in the form of legal defeats, public dissatisfaction, and loss of government support, gradually drained the Court's power.

Although the labor movement had put up the most consistent opposition to the Court of Industrial Relations, it was business that dealt the Court its most significant blow. In the Court's first two years of operation, many companies had opposed its rulings, but accepted them. However, the Wolff Packing Company proved unwilling to acquiesce in the Industrial Court's ruling, which set a new wage scale, hours, and conditions. The Wolff Packing Company simply ignored the ruling and in July 1921, the Industrial Court began proceedings in the Kansas Supreme Court to force the company's compliance.[1]

In response to this action, the Wolff Packing Company questioned the authority of the Court to rule in its case. According to Wolff's attorneys, the Industrial Court did not have the right to bring cases in it own name. Its attorneys also maintained that even if the Court could bring cases before the Supreme Court, the case involved the issue of wages of their employees. It was, therefore, the duty of the employees, not the Court, to sue the

company. The company also claimed that the Industrial Court was a legislative body not a judicial one, and therefore had to seek approval of its rulings from the Supreme Court before enforcing them. The final aspect of the Wolff Company's reply was that the Industrial Court violated the fourteenth amendment by depriving the company of its rights and property without due process of law. Wolff maintained that, in issuing the order, the Industrial Court had deprived them of their right to a contract, and had raised wages, thus depriving them of their property.[2]

The Kansas Supreme Court took the company's claim of a violation of the fourteenth amendment very seriously, and assigned a commissioner to investigate whether or not the Industrial Court's order would deprive the company of a significant amount of its assets. The commissioner found that the company had lost significant amounts of money in preceding years. He therefore maintained that the Industrial Court's ruling would deprive the company of an excessive amount of money. In defense of the Industrial Court's decision, William Huggins maintained that prior to, and during, the war the company had been a thriving industry. The company's loss of money was due to the unusual post war economic climate, and would improve in time. As a result, the company should have to obey the order of the Industrial Court.[3]

A majority of the Supreme Court justices found in favor of the Industrial Court. In the ruling the Supreme Court refuted most of the company's case very quickly. As far as the Industrial Court's right to bring cases before the Supreme Court, it found that that right was clearly stated within the Industrial Court Act. Also, the case brought by the Industrial Court was specifically to enforce one of its orders, not to raise the wages of Wolff's employees. Thus it was not the employees' responsibility to challenge the

company's claims. The Supreme Court also pointed out that no legislative tribunal was required to seek prior authorization from the judicial system before issuing a ruling. The role of the judiciary system was purely a reactive one.[4]

The Supreme Court devoted most of its ruling to dealing with the issue of the fourteenth amendment. The ruling outlined all the sections of the Industrial Court Act that restricted the actions of both the company and the employees. The Supreme Court further pointed out that in cases of public industries, companies were often forced to accept government supervision. As the Industrial Court Act declared all industries involved in the production of food to be vested with a public interest, Wolff Packing Company was bound by the act. Finally, on the issue of being deprived of funds, the Supreme Court stated that there was nothing compelling the company to operate at a loss. In fact, if the only way a company could operate was to sacrifice the wages of its employees that company should dissolve.[5]

However, this view was not shared by all the judges. There was a dissenting opinion from Justice Burch. Burch opposed the Court's ruling on the basis that the Industrial Court was an emergency statute. According to Burch, the Industrial Court could not simply step in whenever it wanted to. "The legislature did not completely socialize the manufacture of food products . . . the mere fact that the defendant conducts one of the essential industries is not enough to subject its business to state control."[6] Burch felt that no state of emergency had existed when the Industrial Court intervened, and thus the Court had no jurisdiction in the case. Although there had been the threat of a strike, by the time the Industrial Court finished its investigation that threat had supposedly passed. Burch also noted that "many of the defendant's employees are old

residents and responsible citizens . . . not under [the] domination of agitators," and were thus not prone to strike.[7] Burch further pointed out that even if the threat of a strike had existed, it would not have endangered the public good. The Wolff Packing Company sold most of its product outside the state, and was a small company in a highly competitive industry. Consequently, a strike in its plant would have had a negligible effect on the public.[8]

The Wolff Packing Company appealed its case to the US Supreme Court, where the state Supreme Court's ruling was overturned. The main assumption of the Kansas Supreme Court's ruling was that food production was vested with a public interest and was under the control of the Industrial Court. However, according to the US Supreme Court, a legislative body could not simply declare an industry to be vested with a public good. Public good, and through it the right of governmental control, came from well established legal precedents. For an industry to be vested with a public good, the industry had to gain its authority from the public, such as railroads. Public good could also come from longstanding tradition. Industries like milling had been regulated by governing bodies since the colonial period, and remained under government supervision. The Wolff Packing Company did not fit either of those categories. The US Supreme Court also sided with Judge Burch's interpretation of the Industrial Court Act as an emergency measure only. The stoppage of work in a small packinghouse would not result in a public emergency.[9]

However, when the US Supreme Court overturned the Kansas Supreme Court's ruling, it referred only to the issue of wages, and made no mention of hours or conditions. Seeing a loophole, the Industrial Court maintained that, although it could not enforce the

wage increase, it could still enforce the changes in hours and conditions. This issue was once again brought before the Kansas Supreme Court. In spite of the complaints of the Wolff Packing Company that the case had already been settled, the Kansas Supreme Court ruled that the US Supreme Court's ruling did not include working hours or conditions.[10] This time, though, two judges issued dissenting opinions. Judge Burch simply reissued his previous dissent stating that the Industrial Court had no jurisdiction in the case. Judge Harvey issued a dissent on the grounds that enforcing the hours proposed in the Industrial Court's order meant that the company would have to pay its employees overtime. As a result, the issue of hours was also an issue of wages, and ". . . the former judgement of this court [should] be reversed in its entirety."[11]

In mid 1923, the Wolff Packing Company again appealed to the US Supreme Court, and again won. Because the US Supreme Court had maintained that the food industry was not vested with a public good, the Industrial Court had no authority over it even if the issue of hours and conditions had not been specifically mentioned in the original ruling. Therefore, the Industrial Court's control over the food industry was declared unconstitutional.[12]

This ruling was strengthened further by a case brought by August Dorchy in early 1924. Alexander Howat, after paying a bond, was given parole, and had been released from jail in February 1923. However, Dorchy, who was still in prison for the violations of the Industrial Court Act, saw the Supreme Court's ruling in the Wolff case as an opportunity to overturn his own conviction. Phil Callery and Redmond Brennan, Dorchy's attorneys, made a careful study of the rulings in the Wolff case, and determined that they were applicable to their own case.[13] After several months of delay, the US

Supreme Court ruled that, like the food industry, the coal industry was not subject to direct government control. The ruling not only overturned Dorchy's conviction, it also exonerated Howat and the other members of the old District 14 board, and expanded the definition of unconstitutionality in relation to the Industrial Court. Not only could the Industrial Court no longer oversee the food industry, it could no longer oversee industries involved in the production of fuel.[14]

In spite of their legal defeats, supporters of the Industrial Court continued to maintain that it was a viable institution. William Huggins felt that "the conflict between the two Courts as to the construction of the Industrial Act is plainly irreconcilable . . ." However, he was quick to point out that from the Industrial Court's perspective, at the time of their ruling in the Wolff case there was an emergency in the meat packing industry. According to Huggins, it was felt that the Amalgamated Association of Meat Cutters and Butcher Workmen of North America was on the verge of a nationwide strike. Although the strike had not come until several months later, the threat of the strike had been the motivating factor in their decision to intervene. Huggins also pointed out that although the Court could no longer oversee the food and fuel industries, they could still oversee industries that provided public utilities such as railroads. As the majority of cases handled by the Industrial Court had come from railroad employees, Huggins did not see the Supreme Court's ruling in the Wolff case as significant.[15] Henry Allen also shared this view. In 1923, Allen, as quoted in an article in *The Literary Digest,* stated that the decision of the Supreme Court only applied to the packinghouse industry. He also felt that the Industrial Court could still act in that industry so long as it could prove that there was an emergency. United States Senator Arthur Capper even went so far as to say the ruling

in the Wolff case would strengthen the authority of the Court. However the Senator failed to elaborate on exactly how it would strengthen the Court.[16]

At least one labor organization seemed to agree with this interpretation. In August 1924 the Amalgamated Association of Street and Electric Railway Employees of America Local 829 brought a case against the Arkansas Valley Interurban Railway Company. The contract that the Industrial Court had helped broker had expired, and the company refused to enter into a new contract.[17] Not only was the Industrial Court able to arbitrate a new contract, but both parties agreed to abolish their own dispute settlement system in favor of using the Industrial Court.[18] This expression of confidence in the Industrial Court was particularly interesting considering that six months later the Court would cease to exist.

Even if the Industrial Court had not been affected, as its supporters claimed, the stigma of unconstitutionality had a dramatic effect on the Court. All opponents of the Industrial Court interpreted the Wolff ruling as a total repudiation of the Industrial Court. As Phil Callery put it: "the Industrial Court, once so virile and green, has lapsed into a state of 'innocuous desuetude,' and, in effect, is as dead as a salt herring."[19] This view was shared by many both within and outside the labor movement. An editorial in *The Independent* stated that the decision in the Wolff case ". . . practically nullified the Industrial Court Act . . ." It also considered the ruling a victory over the ". . . assaults on individualism under the guise of public welfare [that] are becoming more and more frequent . . ."[20] *The Nation* said ". . . the court's condemnation of the act is so sweeping that it is doubtful whether anything of substance remains." The editorial concluded by saying "*the Nation* takes pride in having opposed the court from the very beginning."[21]

Opposition to the Industrial Court took other forms as well. In the summer of 1922, a railroad shopmen's strike broke out throughout the nation. For Kansas shopmen joining the strike meant violating the Industrial Court's anti-strike clause. Governor Allen took the situation very seriously, and even activated National Guard troops, which he sent to major railroad junctions throughout the state to keep the peace.[22] The strikers, for their part, started issuing placards that said "we are for the strikers 100 per cent," and asked merchants to put them in their windows. Allen ordered the signs taken down. Allen's close friend, and fellow newspaper editor, William Allen White saw this as a violation of freedom of speech, and put a placard in the window of the *Emporia Gazette* building that read:

> So long as the strikers maintain peace and use peaceful means in this community, the Gazette is for them 50 per cent, and every day which the strikers refrain from violence, we shall add 1 per cent more of approval.

Considering the placard a violation of the Industrial Court Act, Attorney General Richard Hopkins issued a warrant for White's arrest. Upon hearing of the warrant, White, who wanted to test the matter in court, went for a drive in the country. He avoided being arrested until the afternoon so all of his competing newspapers would be closed and the *Emporia Gazette* could get exclusive coverage of the event. White's arrest garnered nationwide attention, and he received offers of legal aid from some of the nation's top lawyers. White also wrote the Pulitzer Prize winning editorial, "To an Anxious Friend," which expressed his views on the freedom of speech, ". . . you can have no wise laws nor free enforcement of wise laws unless there is free expression of the wisdom of the people . . ."[23]

Undoubtably realizing that his actions had caused a public relations crisis, governor Allen tried to let the case die out. Although White's trial was set for November 1922, the state asked for a continuance. If the continuance had been granted, Allen would have been out of office by the time White's case came to trial, and thus would have avoided responsibility for it. However, the continuance was denied on the grounds that it would have violated White's right to a speedy trial. Then Hopkins ordered the Lyon County attorney to drop the case, which he did. This angered White, who demanded that the state either grant him a chance to answer the charges or apologize. Although White wrote several letters to Allen demanding his day in court, it was clear that Allen and the state had washed their hands of the case. When the motion to dismiss was entered, the District Court Judge chastised the state for malicious and reckless prosecution, but granted the motion.[24]

William Allen White never intended to challenge the whole Industrial Court Act. His only interest in the case was to show the unconstitutional actions of the Court in the case of the shopmen's strike.[25] However, many of the Court's opponents pointed to White's case as an example of the Court's failure. *The Locomotive Engineers Journal* stated that:

> Mr. White holds that he has a just grievance against the Attorney General for backsliding [on his right to a trial]. But the Attorney General now says there is no law on which the editor can be convicted; not even the Kansas Industrial Court law can be stretched to cover the case of a man who committed the "crime" of picketing by showing a poster . . . If Mr. White's case were necessary to show up the injustice of the law then we would be for his carrying it through to the last ditch.[26]

The *Wichita Eagle* claimed that White ". . . has not violated the law; he is testing official action which he believes not to be in accordance with the highest law of the land."[27]

Although legal defeats and public opposition were an important part of the decline of the Industrial Court, loss of key government support also had a significant affect on the Court. Many Progressives saw World War I and its aftermath as an opportunity to advance their reform-minded ideals. Nineteen-twenty had seemed to confirm this view with the passage of the women's suffrage and the prohibition amendments, as well as state level legislation like the Industrial Court.[28] However, 1920 also saw the election of Warren Harding as president. Harding was nominated because he had no affinity for the Progressive cause, and old-line Republicans felt that he would be easy to control. Harding's election also coincided with a sharp downturn in the economy. The economic boom of World War I ended with the war, and with no clear plan for demobilization, the country soon lapsed into depression. Although for some Progressives the depression was seen as a rallying point, it was also a threat to their reform programs.[29] With the start of the post-war depression, many Americans began calling for tax cuts and government austerity. Progressive programs like the Kansas Industrial Court were easy targets for a public demanding tax cuts.[30]

The Industrial Court's vulnerability became apparent in the 1922 election. The increasing calls for lower taxes by farmers and others hard hit by the post-war depression had the effect of dividing the Republican party. Although there were many Republicans who still supported a progressive government, some Republican candidates were beginning to appeal to the public's demands for tax cuts. One way of doing that was to call for the consolidation or elimination of government departments. For the first time, there was serous criticism of the Industrial Court by Republicans. Several Republican

candidates characterized the Industrial Court as an ineffective drain on the state's budget. As Republican gubernatorial candidate Fred Knapp put it:

> The Industrial Court should be abolished. It has been given a fair trial and has proven incompetent and absolutely worthless in dealing with industrial disputes. In fact it has been the center of an internal war since its organization and has done more to foster and engender hatred, disorder and disagreement among employers and employees than all the other disturbing elements combined.[31]

The Democratic party came out clearly against the Industrial Court. All three of the main Democratic nominees for governor admonished the Court for being both a drain of funds and the first step towards a police state. Henderson Martin claimed that the ". . . exorbitant expenditures in the administration of the industrial court law . . ." were solely for the purpose of ". . . establishing in Kansas a state constabulary." Sam Amidon called the Industrial Court a political machine for making Henry Allen president.[32] Jonathan Davis felt

". . . that the need for the far-reaching powers of this law [Industrial Court Act] have been greatly exaggerated through unwarranted publicity and political exploitation."[33]

Although not a gubernatorial candidate himself, Henry Allen played an important role in the selection of candidates. Allen used his position as governor and editor of the *Wichita Beacon* to condemn candidates in both parties who wanted to dismantle the progressive reforms he had helped put in place. In a speech before the Kansas Day Club, a group of influential Republican politicians, Allen denounced all Republican candidates who called for lower taxes as leftist radicals.[34] The *Beacon* hinted that the Democratic party was also in league with radicals.[35] The *Beacon* described the Democratic party's wish to repeal "obnoxious laws" as "poppycock."[36] In Herington, which was under

martial law as a result of the shopmen's strike, a National Guard officer informed a local Democratic candidate that he could not speak about anything relating to the rail strike, the Industrial Court, or ". . . any subject which might lead his hearers to think of these things."[37] Allen did not restrict his condemnation only to Republicans and Democrats. A *Beacon* editorial referred to Samuel Gompers and the leadership of the AFL were referred to as the poisoned bureaucracy of the labor movement.[38] In another editorial, the *Beacon* thanked the Non-Partisan League, who supported lower taxes, for not endorsing the Republican party, as their endorsement would be political suicide for the Republicans.[39] In fact, the *Wichita Eagle* described Allen's ruthless campaign as ". . . a hunt for raw meat."[40]

Allen also did his best to promote the Industrial Court. Allen suggested that the Industrial Court was responsible for the large amounts of cheap coal on the market, and that rumors that the state was strangling the coal industry were radical propaganda.[41] Allen also felt that institutions like the Industrial Court were a public good, and that "persons who live in a civilized community must necessarily resign themselves to a condition in which the state invades personal affairs."[42] In answer to claims that the Industrial Court restricted freedom of speech, Allen proclaimed that lockjaw was the only limitation on free speech in Kansas.[43]

In the end, Allen gained only a partial victory. William Morgan, a strong supporter of the Industrial Court, won the Republican nomination for governor, and on August 29, the Kansas Republican party council put together its platform. In spite of fierce debate, the council endorsed the Industrial Court Act as part of the party platform.[44]

However, Allen's accusations had done little to diminish Democratic opposition. Jonathan Davis, who opposed the Industrial Court, gained the Democratic nomination. Davis played on the discontent of farmers over the depression, and portrayed Morgan as favoring higher taxes. It was apparent to many that Morgan was by no means the guaranteed victor that Allen had been in his two elections.[45]

By the end of election day, on November 8, 1922, it was apparent that Davis had won by a significant margin. Although it was three days before it was made official, the Democrats had declared victory by early afternoon on election day. Davis was only the fourth Democrat to be elected governor in Kansas up to that point.[46] Other Republican candidates also lost to Democratic opposition. John Curran the District Court Judge of Crawford County, who had been a key figure in the prosecution of Alexander Howat, lost his judgeship. James McDermott, who had been running for the state House of Representatives, was also defeated. The Democratic victory was attributed to a split in the Republican party between Allen supporters and opponents, and many Republicans blamed Allen's heavy-handed campaigning for their losses.[47] However, the Democrats were not totally victorious. The Republicans maintained their control over the legislature, and Richard Hopkins, who had prosecuted many cases before the Industrial Court, was elected to the state Supreme Court.[48]

The election of Jonathan Davis revealed how closely the Industrial Court was tied to the governorship. When Huggins had authored the Court of Industrial Relations Act, he had been opposed to Allen's demand that the judges be appointed by the governor, as it tied the Court too closely to a single politician.[49] Allen had been the Court's major

promoter, traveling all over Kansas and the United States proclaiming it as the solution to labor unrest. He had also appointed judges that were his loyal supporters, which guaranteed that the Court would reflect his own views on labor relations. Supporters and opponents alike agreed that the Industrial Court had made Allen, but it was also clear that Allen had made the Industrial Court. With Allen out of the State House, the Court would have to deal with an administration that looked upon it with disfavor.

In his campaign Davis had promised to have the Industrial Court Act abolished. In the 1923 legislative session, Davis moved to keep that promise. He submitted a bill that would have cut the number of judges on the Court from three to one, and would have limited the Court's powers. Although the bill passed the Senate, it failed in the House of Representatives. Davis lamented that the "law will probably stand as it is until the next legislature, a useless expense."[50] Davis did discuss the possibility of calling a special session in the fall of the year to abolish the Industrial Court on the grounds that it would save the state $100,000 in revenue. His plan was further bolstered by the fact that the caseload of the Industrial Court had been dropping since 1921. Nineteen twenty-three saw only two cases handled by the Court, yet the Court's appropriations had been set when the Court had been handling many more cases.[51] However, it soon became clear that, although the public may have supported the abolition of the Industrial Court, the Republican-dominated state legislature would not allow the Court to be abolished directly.[52]

Davis's supporters offered a variety of alternatives to neutralize the Court. One suggestion was to avoid offering a bill that would totally abolish the Industrial Court, and

instead submit a bill that would recreate the Labor Department and give it the Court's jurisdiction.[53] Another idea came from the Central Labor Union of Hutchinson, which suggested that Davis veto the Court's new appropriation, thus leaving it without money to function. If that did not work, the Union suggested withholding appointments to the Court and thereby depriving it of personnel. As a last resort, the Union suggested appointing individuals like Alexander Howat or Eugene Debs as judges. "None of these . . . supporters of an Industrial Court want such men as these on the board [and] they will repeal this law in a hurry if they think such is liable to be the case . . ."[54]

Davis opted to appoint Democratic supporters to the Industrial Court. However, this would be difficult. As one of Allen's last acts as governor, he had submitted several recess appointments to fill vacancies left by expiring terms. Davis considered these appointments null and void, and appointed Lee Goodrich, a Democrat, to fill John H. Crawford's position. The Attorney General disputed Davis's right to do this, and ordered the Secretary of State to ignore the appointment. Goodrich brought a case before the state Supreme Court to have Crawford ousted. However, the Supreme Court ruled against Goodrich, and maintained that Allen's appointments were valid on the grounds that they had been approved by the Senate. Not long afterwards, Huggins's three year term on the Court expired, and the Industrial Court's author and the last of the original judges went back to being an attorney in Emporia.[55] Davis appointed Henderson Martin, who had been his opponent for the Democratic gubernatorial nomination, to the vacant position. Under the rules of seniority James A. McDermott became the presiding judge of the Court. A year later, though, McDermott resigned his position and Crawford became presiding

Judge.[56] Davis then appointed Joseph Taggart to the judgeship, giving the Industrial Court a Democratic majority.[57]

It is questionable how much effect Davis's appointments had on the Court's demise. By the time Taggart was appointed, the Court had handled only one case. Due to the US Supreme Court rulings in the Wolff case, most considered the Industrial Court a dead letter. In fact the only major conflict encountered by the Court in 1924 was over the appointment of a new mine inspector, Leon Besson, who was a supporter of Alexander Howat. Crawford opposed the appointment on the grounds that Besson had not taken the necessary exam. However, Crawford was overruled, and Besson became the mine inspector. The Attorney-General then brought a case before the state Supreme Court to have Besson ousted on the grounds that he was not qualified for the position. The Supreme Court overturned the appointment, but Besson simply took the exam and was reappointed without protest.[58]

It was readily apparent that the Industrial Court's days were numbered. In 1924, after serving only one term as governor, Jonathan Davis was defeated by Republican Ben Paulen. In spite of the election of a Republican, there was little hope for the Industrial Court. The platforms of both the Republican and Democratic candidates made almost no mention of the Industrial Court.[59] In January 1925, a bill was submitted to the state legislature by a committee appointed by governor Paulen to find ways to cut costs. The bill called for the elimination of the Public Utilities Commission, the State Tax Commission, and the Industrial Court, and gave their powers to the new Public Service Commission.[60] Gone were the days of heated debate, such as there had been in the 1920

special session that had created the Industrial Court. The *Topeka State Journal* reported that the state legislature was lining up to sign whatever bill governor Paulen recommended.[61] Even Henry Allen's *Wichita Beacon* had little to say on the issue. In fact, the *Beacon* devoted only one editorial to oppose the legislation. Most of that editorial condemned the legislation on the grounds that the Tax Commission was too important a department to be abolished, and that the Public Utilities Commission was already overburdened with cases. Almost as an afterthought, the editorial stated that Industrial Court could be reduced to a single individual. ". . . That one man could preside over the labor bureau without adding anything to the inevitable cost of the labor bureau."[62] With opposition reduced to a whimper, the law passed with little notice, and the Industrial Court ceased to exist.[63]

It was a combination of factors that ultimately led to the Industrial Court's decline. The constitutionality of the Court was finally tested in the US Supreme Court and the Industrial Court failed. The Supreme Court would not allow a state tribunal to oversee private industry regardless of need. Although the Supreme Court's ruling did not completely destroy the Court, the stigma of unconstitutionality gave ammunition to the Court's opponents. The Court's loss of popularity was reenforced by the gubernatorial election of 1922. The Progressive ideals that had spawned the Court had faded with the onset of a post-war depression, and many were calling for the Court's abolition to save money. Jonathan Davis used dissatisfaction with government spending to win the governorship. However, the Republican-controlled legislature would not allow Davis to simply eliminate the Industrial Court. This proved to be a moot point, though, since the

Court's case load had virtually disappeared. In the end, the Court of Industrial Relations Act simply faded away into the bureaucratic landscape.

Conclusion

Legacy of the Kansas Experiment

The Kansas Court of Industrial Relations was hailed as the only attempt in United States history to replace strikes and lockouts with compulsory arbitration. Its successes and failures have puzzled lawyers, politicians, economists, and historians for years. However, the Court's uniqueness does not lay in its success or failure. The Industrial Court was symptomatic of an effort by the public to control the perceived conflicts of the post World War I era. Thus, regardless of its effectiveness, the Industrial Court's real significance lies in its role as a progressive solution to postwar labor issues.

There were two key factors in the Industrial Court's creation: public animosity towards the labor movement, and the ability of progressives like Henry Allen to harness that animosity. In one sense the Industrial Court was a product of the unusual post World War I social conditions. Fear of radicals and foreigners led to the repression of a wide variety of institutions linked with those groups. Among those institutions was the labor movement. In Kansas, antagonism towards labor was reenforced by the 1919 coal strike, which put the public at risk. Many Kansans' perceived the Industrial Court as a means of suppressing the labor movement. In another sense the creation of the Industrial Court could be seen as the reassertion of progressivism in the postwar period. When the war ended, the many government controls that the progressives had hoped would be retained were discontinued. The Industrial Court was an attempt to substitute a state level control over industry and labor for the discontinued federal controls.[1]

The public's hostility towards labor and the resurgence of progressivism came together in the Industrial Court Act. The proponents of the Industrial Court, although they shared the same animosity towards the labor movement, saw the Industrial Court as an equitable solution to labor unrest. However, these proponents, specifically governor Allen, played upon the public's hostility towards labor in order to promote the Industrial Court. This tactic was so successful, that when the final vote was taken on the Industrial Court Act, several legislators remarked that they themselves thought the act was a mistake, but were forced by their constituencies to vote in its favor.

The Industrial Court's relationship with the working class, however, was a more complex one. The majority of the organized labor movement was opposed to the Industrial Court. When the Industrial Court Act was in the legislature, hundreds of letters from union members opposing the act flooded Allen's office. However, after the Court was in place there were several groups of laborers who were willing to use it. Among these were local railway unions who had been forced to utilize federal arbitration systems during the war. These unions saw the Industrial Court simply as a replacement for the wartime arbitration system. Unorganized laborers also saw the Industrial Court as a benefit. Among laborers who did not have a union to handle their demands, the Industrial Court proved to be a useful substitute. The supporters of the Industrial Court interpreted this utilization of the Court by labor as a vindication of their plan. However, the majority of the labor movement refused to accept the Court. The United Mine Workers of America in southeastern Kansas were a clear example of this. Under the leadership of Alexander Howat, the miners called strike after strike in direct violation of the Industrial Court Act.

This hostility to the Court was no doubt exacerbated by the Court's tendency to blame all the perceived problems within the coal industry on the miners themselves. In other cases the Court proved equally hostile to labor. During the packinghouse strike in 1921, the Court, although it acknowledged the dangerous nature of the situation, refused to arbitrated the disputes. However, the Court still demanded the strict enforcement of the anti-strike clause. These actions served to alienate an already suspicious labor movement.

Just as the Court's rise was closely linked to progressivism, its fall was tied to that movement as well. The key to the Industrial Court Act was its declaration that industries involved in the production of food, clothing, fuel, and transportation were invested with a public good. This public good made those industries subject to government supervision. For industries that were public utilities, like railroads, this was acceptable. However, many of the industries over which the Industrial Court claimed jurisdiction were private industries, and not normally subject to government control. In *Wolff vs. The Kansas Court of Industrial Relations* the U.S. Supreme Court made it clear that, regardless of act's good intentions, it could not oversee private industry. As a progressive measure the Industrial Court was indelibly linked to government supervision. By limiting that supervision, although the Industrial Court was not destroyed, its ability to expand was inhibited.

As a progressive reform, the Industrial Court also came under attack for its cost. The postwar period had seen a sharp economic decline, and there was an increased demand for government austerity throughout the country. In the 1922 election, many Kansas politicians pandered to those demands by offering to eliminate departments like the Industrial Court. This had the effect of dividing the Republican party, the Court's

bastion of support, and allowed the election of Democratic governor John Davis, an opponent of the Court. The Republican-controlled legislature prevented Davis from eliminating the Court directly, but he did limit the Court's power by appointing judges that were loyal to him. However, because the Supreme Court had declared the Court unconstitutional few cases were brought before it after 1922. In the end, the Court was simply eliminated and its jurisdiction handed over to the Public Service Commission.

In spite of the collapse of progressivism in the United States, and with it the Industrial Court in Kansas, the underlying concepts of the Court continued to resurface long after the Court's demise. Although the Industrial Court was eliminated in 1925, the law that created it still remained on the statute books. It was passed from department to department as the government was reorganized, and exists today under the Kansas Department of Human Resources.[2] Because the law behind the Industrial Court was never overturned there were several occasions when the possibility of resurrecting the Court or something like it was discussed. The first national discussion of resurrecting the arbitration system came in the late 1930s as a result of the use of sit-down-strikes by the Congress of Industrial Organizations. However, in that instance the Industrial Court served as an example of the improper use of labor arbitration as it had been declared unconstitutional.[3]

With the passage of the National Labor Relations Act (NLRA) in 1935, as part of president Roosevelt's New Deal, discussion of the Kansas Court of Industrial Relations also reemerged. In 1937 former Industrial Court Judge, William Huggins, still an avid believer in the Industrial Court Act, wrote an article for the *Journal of the Bar*

Association of the State of Kansas, in which he compared the Industrial Court Act with the NLRA. Huggins analysis of the two acts tended to favor the Industrial Court. In Huggins' opinion the National Labor Relations Act, which was intended to promote unionization and collective bargaining, gave too much power to unions. He maintained that any agreement that resulted from the NLRA would ". . . be the result of compulsion upon the employer which induces him to sign his name on the dotted line to a treaty prepared and presented to him by the representatives of his organized employees."[4] Huggins further promoted the Industrial Court's successes, while minimizing its failures by pointing to the Court's many successes in arbitrating agreements with railroad unions.[5] He also pointed to the Industrial Court's suppression of Kansas coal miners, but conveniently failed to mention the Court's final repudiation by the U.S. Supreme Court in the case of August Dorchy.[6] He still firmly maintained that the Supreme Court's ruling on the Industrial Court had little effect on its constitutionality.[7] Huggins finally made the suggestion that the Industrial Court Act be reexamined in the hopes that it could be used to reform the NLRA.[8]

The final reexamination of the Kansas Court of Industrial Relations Act came in 1941. On the eve of World War II, Domenico Gagliardo, an economics professor at Kansas University, suggested the resurrection of the Industrial Court as a means of dealing with wartime demands for labor. Gagliardo's analysis of the Industrial Court was unique in that it was the most unbiased examination of the Court up to that point. Unlike other analyses Gagliardo's book interpreted the Industrial Court as a product of the postwar Red Scare, but he felt with some modification it could serve wartime needs.[9]

However that belief was never tested, and the Court was never resurrected. The Industrial Court today is largely dismissed ". . . as an interesting but ineffective experiment in labor relations."[10]

The Kansas Court of Industrial Relations was brought about through the combination of fear of labor unrest and progressive resurgence. The Court itself appealed to a small proportion of laborers who saw specific advantages to it. However, the majority of the labor movement went to great lengths to discredit the Court. Ultimately, it was not labor opposition but the collapse of progressivism that brought about the end of the Industrial Court. The U.S. Supreme Court's unwillingness to grant government-extended supervision over private industry limited the Court's effect. Economic pressures on the government served as the final blow to the Court. Although laid to rest, the ideas behind the Industrial Court continued to reemerge for years afterwards in the on going effort to meet the demands of business and labor without sacrificing the public good.

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57. *Kansas Industrial Court,* 225.

58. Ibid, 225-226.

59. Ibid, 226.

60. *Topeka State Journal,* 14 January 1925.

61. *Topeka State Journal,* 24 January 1925.

62. *Wichita Beacon,* 30 January 1925.

63. *Kansas Industrial Court,* 227.

Conclusion Notes

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4. William L. Huggins, "The Kansas Industrial Court Law Down to Date," *The Journal of the Bar Association of the State of Kansas,* (August 1937): 8.

5. Ibid, 13.

6. Ibid, 11.

7. Ibid, 12-13.

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9. Domenico Gagliardo, *The Kansas Industrial Court: An Experiment in Compulsory Arbitration,* (Lawrence, KS: University of Kansas Publications, 1941), v-vi, 3–9, 251-254.

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Appendix A
The Kansas Court of Industrial Relations Act[1]
Chapter 29, Special Session Laws of 1920

Substitute for Senate Bill No. 1.

An Act creating the Court of Industrial Relations, defining its powers and duties, and relating thereto, abolishing the Public Utilities Commission, repealing all acts and parts of acts in conflict therewith, and providing penalties for the violation of this act. - *Title of original act. Title of amending act follows:*

Senate Bill No. 218. (1921.)

An Act relating to the Court of Industrial Relations and amending section 2, chapter 29, of the Special Session Laws of 1920, and repealing such original section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. There is hereby created a tribunal to be known as the Court of Industrial Relations, which shall be composed of three judges who shall be appointed by the governor, by and with the advice and consent of the Senate. Of such three judges first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, said terms to begin simultaneously upon qualification of the persons appointed therefor. Upon the expiration of the term of the tree judges first appointed as aforesaid, each succeeding judge shall be appointed and shall hold his office for a term of three years and until his successor shall have been qualified. In case of a vacancy in the office of judge of said Court of Industrial Relations the governor shall appoint his successor to fill the vacancy for the unexpired term. The salary of each of said judges shall be five thousand dollars per year payable monthly. Of the judges first to be appointed the one appointed for the three-year term shall be the presiding judge, and thereafter the judge whose term of service has been the longest shall be the presiding judge: *Provided,* That in case two or more of said judges shall have served the same length of time, the presiding judge shall be designated by the governor.

Sec. 2. (a) The Court of Industrial Relations shall have such power, authority and jurisdiction, and shall perform such duties as are in this act set forth.

(b) In any matter pending before the Court of Industrial Relations, if it shall be brought to the attention of such court that there is a matter pending before the Public Utilities Commission in relation to the rate charged by the employer, the Court of Industrial Relations may order such matters to be heard and determined at the same time by such commission and Court of Industrial Relations, sitting as one body, the presiding judge of said Court of Industrial Relations presiding, and in case of a tie vote, the presiding judge of said Court of Industrial Relations shall cast an additional vote.

Sec. 3. (a) The operation of the following named and indicated employments,

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1. Henry J. Allen, *The Kansas Court of Industrial Relations: A Modern Weapon,* (Topeka: Kansas State Printing Plant, 1921) 1-12.

industries, and public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the businesses directly affecting the living conditions of the people of this state and in the promotion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby, in any stage of the process, natural products, are being converted, either partially or wholly, from their natural state to a conditions to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the palce of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(b) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act.

Sec. 4. Said Court of Industrial Relations shall have its office at the capital of said state in the city of Topeka, and shall keep a record of all its proceedings which shall be a public record and subject to inspection the same as other public records of the state. Said court, in addition to the powers and jurisdiction heretofore conferred upon, and exercised by, the Public Utilities Commission, is hereby given full power, authority and jurisdiction to supervise, direct and control the operation of the industries, employments, public utilities, and common carriers in all matters herein specified and in the manner provided herein, and to do all things needful for the proper and expeditious enforcement of all the provisions of this act.

Sec. 5. Said Court of Industrial Relations is hereby granted full power to adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: *Provided, however,* That in the taking of testimony the rules of evidence, as recognized by the supreme court of the state of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations; and testimony so taken shall in all cases be transcribed by the reporter for said Court of Industrial Relations in duplicate, one copy of said testimony to be filed among the permanent records of said court, and the other to be submitted to said supreme court in case the matter shall be taken to said supreme court under provisions of this act.

Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments,

public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act.

Sec. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney-general of the state of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the pubic peace or threaten the public health, to proceed and investigate and determine said controversy in the same manner as though upon its own initiative. After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common

carrier should be thereafter conducted in so far as the matters determined by said court are concerned.

Sec. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act: *Provided*, All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare. Service of such order shall be made in the same manner as service of notice of any hearing before said court as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered.

Sec. 9. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person t make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

Sec. 10. Before any hearing, trial or investigation shall be held by said court, such notice as the court shall deem necessary shall be given to all parties interested by registered U. S. mail addressed to said parties to the post office of the usual place of residence or business of said interested parties when same is known, or by the publication of notice in some newspaper of general circulation in the county in which said industry or employment, or the principal office of such utility or common carrier is located, and said notice shall fix the time and place of said investigation or hearing. The costs of publication shall be paid by said court out of any funds available therefor. Such notice

shall contain the substance of the matter to be investigated, and shall notify all persons interested in said matter to be present at the time and place named to give such testimony or to take such action as they may deem proper.

Sec. 11. Said Court of Industrial Relations may employ a competent clerk, marshal, shorthand reporter, and such expert accountants, engineers, stenographers, attorneys and other employees as may be necessary to conduct the business of said court; shall proved itself with a proper seal and shall have the power and authority to issue summons and subpoenas and compel the attendance of witnesses and parties and to compel the production of the books, correspondence, files, records, and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpoena issued by said court after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpoena. Employees of said court whose salaries are not fixed by law shall be paid such compensation as may be fixed by said court, with the approval of the governor.

Sec. 12. In case of the failure or refusal of either party to said controversy to obey and be governed by the order of said Court of Industrial Relations, then and in that event said court is hereby authorized to bring proper proceedings in the supreme court of the state of Kansas to compel compliance with said order; and in case either party to said controversy should feel aggrieved at any order made and entered by said Court of Industrial Relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the supreme court of the state of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises. In case of such proceedings in the supreme court by either party, the evidence produced before said Court of Industrial Relations may be considered by said supreme court, but said supreme court, if it deem further evidence necessary to enable it to render a just and proper judgement, may admit such additional evidence in open court or order it taken and transcribed by a mater or commissioner. In case any controversy shall be taken by either party to the supreme court of the state of Kansas under the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter.

Sec. 13. No action or proceeding in law or equity shall be brought by any person, firm or corporation to vacate, set aside, or suspend any order made and served as provided in this act, unless such action or proceeding shall be commenced within thirty days from the time of the service of such order.

Sec. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of

Industrial Relations through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: *Provided,* That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as their agents or trustees with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of section nine of this act.

Sec. 15. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any action taken by any such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or person, or corporation, shall have invoked the jurisdiction of said court in any matter provided for herein.

Sec. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

Sec. 17. It shall be unlawful for any person, firm or corporation, or for any association of persons, to do or perform any act forbidden, or to fail or refuse to perform

any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any person, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers: *Provided,* That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engaged in what is known as "picketing," or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act.

Sec. 18. Any person willfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed $1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

Sec. 19. Any officer of any corporation engaged in any to he industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to his official position, or to his position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any to the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the state penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment.

Sec. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said

court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: *Provided,* That a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 21. When any controversy shall arise between employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement, and with the consent of the court, refer the same to the Court of Industrial Relations for its findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon said court shall proceed to investigate, hear, and determine said controversy as in other cases, and in such case the findings and orders of the Court of Industrial Relations as to said controversy shall have the same force and effect as though made in any essential industry as herein provided.

Sec. 22. Whenever deemed necessary by the Court of Industrial Relations, the court may appoint such person, or persons, having technical knowledge of bookkeeping, engineering, or other technical subjects involved in any inquiry in which the court is engaged, as a commissioner for the purpose of taking evidence with relations to such subject. Such commissioner when appointed shall take an oath to well and faithfully perform the duties imposed upon him, and shall thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the said court would have if sitting in the same matter. Said commissioner shall receive such compensation as may be provided by law or by the order of said court, to be approved by the governor.

Sec. 23. Any order made by said Court of Industrial Relations as to a minimum wage or a standard of wages shall be deemed *prima facie* reasonable and just, and if said minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive said minimum wages or standard of wages from the date of the service of summons or publication of notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or association, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and said minimum wage or standard of wages so found and determined by said court in such order. It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in said investigation or proceeding: *Provided,* That in case said order shall fix a wage or standard of wages which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

Sec. 24. With the consent of the governor, the judges of said Court of Industrial Relations are hereby authorized and empowered to make, or cause to be made, within this state or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems such as may arise under the provisions of this act. All the expenses incurred in the performance of their official duties by the individual members of said court and by the employees and officers of said court, shall be paid by the state out of funds appropriated therefor by the legislature, but all warrants covering such expenses shall be approved by the governor of said state.

Sec. 25. The rights and remedies given and provided by this act shall be construed to be cumulative of all other laws in force in said state relating to the same matters, and this act shall not be interpreted as a repeal of any other act now existing in said state with reference to the same matters referred to in this act, except where the same may be inconsistent with the provisions of this act.

Sec. 26. The provisions of this act and all grants of power, authority and jurisdiction herein made to said Court of Industrial Relations shall be liberally construed and all incidental powers necessary to carry into effect the e provisions of this act are hereby expressly granted to and conferred upon said Court of Industrial Relations.

Sec. 27. Annually and on or before January first of each year, said Court of Industrial Relations shall formulate and make a report of all its acts and proceedings, including a financial statement of expenses, and shall submit the same to the governor of this state for his information. All expenses incident to the conduct of the business of said Court of Industrial Relations shall be paid by the said court on warrants signed by its presiding judge and clerk, and countersigned by the governor and shall be paid out of funds appropriated therefor by the legislature. The said Court of Industrial Relations shall, on or before the convening of the legislature, make a detailed estimate of the probable expenses of conducting its business and proceedings for the ensuing two years, and attach thereto a copy of the reports furnished the governor, all of which shall be submitted to the governor of this state and by him submitted to the legislature.

Sec. 28. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

Sec. 29. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the official state paper.

Appendix B

Chronology

November - December 1919 - National coal strike. Kansas miners, under Alexander Howat go on strike. Facing a fuel shortage, Governor Henry J. Allen calls for volunteers to run the mines. These volunteers operate the mines until late December when the strike is resolved.

January 5, 1920 - Allen calls a special session of the state legislature to implement the Kansas Court of Industrial Relations Act as authored by William L. Huggins.

February 2, 1920 - The Kansas Court of Industrial Relations goes into operation. William L. Huggins is the presiding judge, along with Clyde M. Reed and George H. Wark. Attorney General Richard Hopkins files the first complaint calling for an investigation of the coal mining industry.

March - April 1920 - Industrial Court handles its first case brought by laborers. The workers of the Edison Electric Company bring a case for a wage increase, which is granted. The workers of the Joplin and Pittsburg Interurban Railway begin bringing cases for wage increases, changes in hours, and conditions. Cases brought by Railroad workers will comprise the majority of the cases brought by labor.

April 1920 - Alexander Howat and other members of the UMW are jailed for refusing to cooperate with the Industrial Court's investigation of the coal industry.

November 1920 - Henry Allen is reelected governor largely because of the popularity gained by the creation of the Industrial Court.

January - February 1921 - Industrial Court is reorganized. It is relieved of its control over public utilities cases, and is consolidated with several other labor departments. James A. McDermott and John H. Crawford replace Reed and Wark as judges.

February 1921 - Industrial Court handles a case brought by the Fort Scott Sorghum Syrup Company. It is the only labor dispute brought before the Court by a business.

February 1921 - Alexander Howat calls the Mishmash Strike, ostensibly to challenge the Industrial Court.

March 1921 - Due to a depressed agricultural market, Kansas flour mills begin shutting down. The Industrial Court oversees this shutdown, and handles 112 applications.

May 1921 - Industrial Court grants the workers of the Wolff Packing Company a wage increase. However the packinghouse will challenge the ruling all the way to the US Supreme Court.

August 1921 - The women telephone operators at the Horton telephone exchange go on strike. The strike is resolved by the Industrial Court's commissioner.

October - December 1921 - Howat and his supporters are suspended by the John L Lewis, president of the UMW, for unauthorized striking. Howat and his supporters continue to strike.

December 1921 - The wives and daughters of striking miners hold three marches in support of the miners. Dubbed the "Amazon Army," these women are suppressed by troops of the Kansas National Guard.

December 1921 - Members of the Amalgamated Meat Cutters and Butcher Workmen of North America go on a nationwide strike. The Court investigates the strike at Kansas City, but refuses to take action. However, the Court does insist that the anti-strike clause of the act be enforced, and the strike is broken by January.

January 1922 - Howat calls off strike. However many of the striking miners are blacklisted and cannot find jobs.

April - August 1922 - John L. Lewis calls a nationwide coal strike. Kansas miners loyal to Lewis go out on strike. However mine operators use the unemployed Howat supporters to work the mines.

July 1922 - William Allen White, friend of Henry Allen, is arrested for violation of the Industrial Court Act. White posted a sign supporting striking railroad shop men. This was interpreted as picketing and White was arrested.

November 1922 - Jonathan Davis, a Democrat, is elected governor after promising to lower taxes. One of Davis's plans for lowering taxes is to abolish the Industrial Court. However, the Republican controlled legislature prevents him from doing so.

July 1923 - The US Supreme Court rules in favor of the Wolff Packing Company, declaring the Industrial Court Act unconstitutional. Although this ruling did not effect cases brought by railroads, which made up the majority of the Court's cases, it was seen by the public as the end of the Industrial Court.

January - December 1924 - Through the whole year the Court only handles one case.

January 1925 - The legislature combines the Public Utility Commission, the Industrial Court, and the State Tax Commission into the Public Service Commission. Although the Industrial Court Act was not repealed, the Court ceased to function.

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Jim Riordan
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