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THE CHILD LABOR POLICY
OF NEW JERSEY

by

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CHAPTER I.

INTRODUCTION.

Child labor legislation is part of the whole body of legislation for social control that has grown with the consciousness of social relationships and of social influences upon the well-being of individuals and with the humanitarian zeal for removing from such relationships all disadvantage upon individuals. It cannot be fully explained apart from that general body of social legislation. Yet convenience insists that it be examined by itself. This is possible with as little disturbance to conclusions in the case of child labor legislation as for any other part of social legislation, for it has been of more independent origin. The sense of the child's relative helplessness has always been keener than that of the need of adult individuals; and social regulations in the child's behalf have developed faster than those of more general application.

In these days the unfolding of such a code of laws is rightly held to be a complex historical process. An account of child labor legislation should regard it as a growth of social policy reflecting all the influences that operated among a people to commit them to the purpose of the policy and to increase the definiteness of their purpose and the efficiency of the measures of control used to accomplish that purpose. The enactment of the law is but the outcome of the gradual discernment of the need, of agitation by leaders of that opinion, of the slow conviction of the public subject to inertia and vari-

ous conflicting interests. The improvement of the law and the vigor of its enforcement grow only with experience and failure and with the adding of public zeal to public conviction in behalf of the object set out for. The emergence of this social determination and of its increase in wisdom is the very thing of interest, rather than the chronological compendium of the laws which are passed under its pressure.

This aspect of the subject as one of state policy, however, does not imply that there has always been, or indeed even is yet, in the minds of the people or of the legislators a well defined purpose and a clearly worked out plan for carrying it through. Those are matters of growth. When a policy is put forward, not even its promoters have a clear perception of it in all of its parts. And such precision as they might give it is hindered by the necessity of compromise at one point and another with the opponents of the proposal. But there is discernable a constant approach toward a clearer purpose and a more systematic plan, which constitutes a growth of policy.

It may be objected to this view of child labor legislation that a great part of such laws are passed to placate an insistent group of agitators merely, and therefore do not represent a true policy of the whole people, most of whom are indifferent to the matter. There must be recalled here, however, the difference between the people of the state and the government as the agency of the state. The position taken on questions of state policy by those who compose the government may differ from that of the people. How much will depend upon the responsiveness of the government to the opinion and feeling of the people. This difference may be not only in disregard of the people or antagonistic to them, but also in

advance of them. State policies may thus be adopted which at the time lack a universal support, but which gradually receive the full indorsement and active support of the whole people. It is in that connection that many of the enactments of unsupported proposals appear as stages in the rise of a true state policy and get their importance because of that relation to a growth.

Again, the question of policy involves the rejection of proposals as well as their adoption. Hence the absence of universal support, instead of throwing the whole matter out of discussion from this viewpoint, is merely a thing to be noted as evidencing the negative attitude of the people for the moment toward the proposal.

Although it is most desirable to cast an account of child labor legislation in the form of a history of social policy, any such discussion must fall short of revealing the growth of the policy from all of its origins. Every law is recorded for the historian's examination, but not every attempt to make law and, much less, all the information bearing on the origin, the strength, and the practical sense of the agitation for law, and of the public pressure behind its enforcement. Frequently, all that can be discovered is the bare skeleton of the legislation on the matter. As might be expected, much more is possible with the later years in the present case than with the earlier periods.

It will contribute to a clearer discussion from this point of view to inquire here what should properly be considered in a review of a state policy. First to note is the object set out for. In the present case this is usually to fix a standard limiting the conditions on which children may be employed. This is the fundamental question, but not the only important one. When that is agreed upon, there remains

the legal definition of the standard and the mandate concerning it. This is a question of clearness in the law and of proper foresight and provision for the administrative difficulties and incidental effects to be encountered in compelling conformity to the standard. Many a law prescribing a policy has missed its purpose because it failed to define and decree its standard with such precision that all individual lapses from the intended standard could be covered without question by the terms of the law; and many laws have failed of enforcement because the policy of the state, according to the terms of the law, could not be pushed without working results not intended and not desired; and hardly a law has been passed that has not failed in some measure because of administrative weakness through failure to provide against contingences and devices that permitted its evasion. A third factor in any state policy is the provision for enforcement. A standard set up and a legal definition of it with a mandate concerning it will never be more than a pious resolution unless it has adequate provision for carrying it into effect. The provision for enforcement involves the definite location of responsibility for enforcement upon specific officers with ample powers. If a policy be regarded as an endeavor to work definite results, a discussion of the growth of the state's policy toward child employment should note how far each of the foregoing elements, necessary to an effective policy, have been present from time to time. This will often require a degree of detail that might be foregone if the interest were in the standards of the policy alone.

Such an account should include also a measurement of the results secured. How far was the policy actually carried out, and how far was the object actually accomplished? This is the most important part of the account,

for the results desired are the *raison d'être* of the whole policy. It is an unfortunate circumstance, however, of any legislative policy that its effects can hardly, if at all, be distinguished and measured apart from the complex of results following upon the many entangled contemporary forces. More unfortunate still is the undeveloped sense of the importance of and the understanding for making careful current record of evidences which will in time reveal such effect of a policy as it may be possible to distinguish. The want of satisfactory means of determining results is often accepted as reason for abandoning the effort. But the prime importance of answering as far as possible the so-called practical man's question, "What good did it all do?" commands rather that whatever evidence may be at hand shall be carefully measured and its force added to the composition in order to secure the best resultant possible.

The development of child labor legislation in New Jersey falls, chronologically, into four periods which are characterized by their degree of approach to the above noted elements of a clearly defined and vigorously pursued policy. First, there is the early protection to child workers in certain relations which had long been afforded. Second, there is the period from the first act of 1851 to 1883 during which an inconstant and ineffectual beginning was made toward a general policy. A more earnest, more intelligent, yet critically imperfect and poorly supported endeavor fills the third period from 1883 to 1904. Finally, since 1904 a well planned and well executed policy has received general support.

The ambition of this monograph is twofold. First, it hopes to convey to the reader as clearly as possible the conception of the child labor policy of New Jersey as the expression of a truly evolutionary development in the

case of each of the elements of a successful policy ; that is, in the case of the standard to be striven for and its definition in the law, and in the case of the administrative provision for enforcing the social will. Whether this object can be better attained by considering all of the features of the policy for each period in turn, or each feature in turn through all the periods, is a question which will be answered according to the individual's habits of mind in grasping the evolutionary significance of historical movements. The writer has chosen to present the matter, except for the earlier periods, in the latter fashion because to him that seems the most illuminating form in which to place it. In the case of the periods before 1883, the attitude of the state is so imperfectly developed that it seems better to carry forward all lines of the narrative at the same time.

SPORADIC POLICY

CHAPTER II.

EARLY PROTECTION FOR CHILD EMPLOYEES.

Pauper and Apprenticed Children.—Protection to child workers was at first very limited. The right of parents to control their children was unqualified by the public sense, yet to be developed, of the commanding interest of the child's future. This could come only with the improvement in well-being of the family which relieved it from the pressure of immediate necessities and permitted a longer view ahead. It waited also on the wider provision of public schools and such other opportunities for preparing a child for the future as would seem to be a profitable use of his time if unemployed. Thus, while restrictions upon the labor of children designed in the interest of the children were among the earliest enactments of New Jersey's independence, they had but a limited application. One class of these restrictions touched only children who were in some direct manner wards of the state and for whom the state was, on that account, bound to insure a minimum of favorable conditions for their future well-being. These were the regulations for the protection of pauper children let out to work by the poor law officials.¹ Such restrictions extended to all em-

¹Section 18 of the act of 1774, for the settlement and relief of the poor, requires the indentures of every child apprenticed by the overseers of the poor to contain a clause obligating the master to "cause every such child and children to be taught and instructed to read and write." (*Laws of New Jersey*, Revision of 1821, p. 42.) This, however, was the only restriction in favor of the child.

In 1801 the officers of the multiplying county poorhouses were required to apprentice children in their care on the same conditions

ployments, but were limited to children who were direct wards of the state or its recognized agents. At the same time, however, there was an extension of this protective policy, through features of the regulation of apprenticeship, toward the inclusion of all employed children. This came through the provisions for protecting apprentices against the abuse of unfeeling masters.²

The protection to apprentices offered the form of protection to all children employees so far as apprenticeship was the relation of employment for children of the day. But in reality it was always limited and became more so. There was no minimum age at which children might be put to work; there was no restriction on the hours per day or on night work; there was no restriction on the sort of work a child might do. And even the protection offered in the law was not guaranteed by any adequate provision for its enforcement against masters on whom the apprentices might be economically or socially dependent. Consider also the disuse into which the apprenticeship as the above. (*Public Laws*, 1801, p. 108.) This was reenacted as part of the revised act of 1820. *Pub. Laws*, 1820, p. 166.

When the Mount Lucas Orphan and Guardian Institute was incorporated in 1845, it was empowered to apprentice children entrusted to it to any occupation or employment. But it could not do so, in the case of boys, until they were fourteen years old, or, in the case of girls, until they were twelve years old, and in neither case "until such child, having capacity to learn, shall have been taught to read and write." (*Public Laws*, 1845, p. 107.) This was the first application of a minimum age limit to the employment of children in New Jersey that the writer has discovered.

²The act of 1794, prescribing the legal status of apprenticeship, provides in section 5 for redress to any apprentice against a master who is "guilty of misusage, refusal of necessary provision or clothing, unreasonable correction, cruelty, or other ill treatment." In case of such a grievance, the apprentice might appeal to a justice of the peace who might decree as the "equity of the case" might require, subject to appeal to Quarter Sessions. *Laws of New Jersey*, Revision of 1821, p. 366.

ticeship system increasingly fell, and the inadequacy of the apprenticeship laws to protect the child workers of the day is apparent. Apprenticed pauper children must have fared even worse than others. For the interest of the overseers of the poor and of the poorhouse officials to be rid of the expense of keeping their charges made them indifferent about securing for children apprenticed by them the protection which the law provided.

While the actual protection enjoyed by pauper and apprenticed children thus was very meagre, it should be noted in passing that in these regulations concerning them the policy of state interference with the employment of children in the interest of the child's future was recognized in principle in the law.

Factory Children.—The factory system opened an enlarging opportunity for the labor of children in manufacturing employments outside the home, and at the same time weakened the apprenticeship arrangements through which alone the law offered its meagre protection to the child worker. The new conditions called for new legislation if the state was to continue and to develop the policy of safeguarding the future interest of employed children. A seeming acknowledgment of the need and an apparent attempt to continue the policy under the changed conditions are suggested by a provision in an act of 1816. This law, designed to encourage the development of manufacturing, was enacted for a period of five years and provided general terms of incorporation for enterprises in certain specified lines of production. By section 9 of the act, the officials of factories incorporated under this law were required to have the children employed by them, whether bound by indenture or parole agreement, instructed in reading, writing, and arithmetic at least one hour each day; to give due attention to their

morals; and to see that they regularly attended some place of worship on Sunday, when within convenient distance.³ This measure merely provided a minimum educational opportunity for child workers. It said nothing as to hours of labor, and it made no restriction on the labor of children in the dangerous iron trades or the unhealthful lead industries, both of which it sought to develop. Yet even this concession to the policy was short-lived, for in 1819 the incorporation law was repealed before the expiration of the five years. Henceforth until 1851 no measure passed the legislature for restricting in any way the employment of children in any occupation or industry.

Child Labor Conditions Before 1851.—With the growth of manufacturing the employment of children in manufacturing increased in New Jersey as in other manufacturing states. There is little reliable information, however, as to the number of children who came thus to be employed in the early and middle parts of the century. Two contemporary estimates have come to hand. According to one, there were in the cotton industry in 1831 as many as 217 children under twelve years of age. These constituted 4 per cent of all cotton mill operatives.⁴ On that basis the number under fourteen,—the common age limit at present,—must have been a large proportion and the number under sixteen very considerable. Another estimate in 1845 for the amount of child labor at Paterson in that year gives 2327 males and 2301 females under sixteen. This totals 4628 children under sixteen, which was 42 per cent of all employees.⁵

³ *Pub. Laws*, 1816, p. 21.

⁴ Committee on Manufactures of the New York Tariff Convention in 1831, quoted in Gordon, *Gazetteer of New Jersey*, 1834, p. 39.

⁵ *Fisher's National Magazine*, Vol. I., p. 459. This was supplied to the writer by Mr. J. K. Towles.

But these figures are suspiciously large to accept without corroboration. It would seem probable, however, that the employment of children was becoming a matter of importance to the state.

And yet there is nothing in this evidence, or are there any implications in other indirect testimony that the writer has seen, which indicates that children of such tender age as had been found in the mills of England were employed in New Jersey in noticeable numbers. There was no class of permanent wage earners who, shut in by an unescapable and relentless competition with each other, were driven to exploit their children at the earliest year possible. Children worked as soon as they could, but not in factories. The number and proportion of young children employed in factories was undoubtedly increasing, but it is not probable that the number under ten years of age was noticeable.

CHAPTER III.

SPASMODIC BEGINNING OF A GENERAL POLICY.

Growth in Law: Child Labor Law of 1851.—In the late forties the sentiment in favor of restricting the employment of children appears to have reached important strength,¹ and to have urged an extension of the policy to all factory children. This was part of a general agitation for reform directed at several objects of complaint. In 1848 two petitions were presented to the legislature praying that the hours of employment for children be limited to eight a day and that employers be required to give them opportunity to obtain a common school education.² These contained, however, no demand for the entire prohibition of child employment below a minimum age. No attention was given to the petitions. In the following year four petitions with the same request were presented to the House.³ The committee on judiciary, to which they were referred, reported a bill declaring ten hours to be a legal day's work in certain specified industries, prohibiting the employment of any "minor or adult" more than ten hours a day or sixty hours a week, and forbidding altogether the employ-

¹ See provision in the charter of the Mount Lucas Orphan and Guardian Institute in 1845, above, note 1, p. 8.

² *Minutes of House of Assembly*, 1848, p. 382. This request was coupled with one for a general ten hour day, which was agitated by the workmen of the time. The same was true for the petitions in the succeeding years noted below. The bills eventually introduced also provided both for a general limitation of hours and for a restriction upon child labor.

³ *Min. House of Assem.*, 1849, pp. 279, 466, 483, 494.

ment of children under twelve years of age.⁴ But before reaching a vote, it was postponed to the next legislature.⁵

In 1850 petitions to the number of three were again sent to the House⁶ and the bill of 1849 was introduced anew.⁷ But disagreement between the House and Senate prevented its passage.⁸ Meanwhile the reform movement was gathering headway. The state campaign in the fall of 1850 was hotly contested on the issues of that agitation, of which the demands of the workingmen were a part.⁹ The outcome was a narrow victory for the Democrats, who advocated the reforms¹⁰ The legislature of 1851 accordingly carried through the program, in which was a bill restricting the employment of children.¹¹

⁴ House Bill 128, 1849.

⁵ *Min. House of Assem.*, 1849, pp. 1003-4. The vote on postponement was 33 to 20.

⁶ *Min. House of Assem.*, 1850, pp. 100, 131, 414.

⁷ House Bill 23, 1850.

⁸ The House passed the measure promptly after some amendment. (*Min. House of Assem.*, p. 505.) But the Senate, with other amendments, struck out the prohibition of the employment of children below the minimum age. That took the heart out of the bill and the House refused to concur. The Senate postponed further consideration until the next year. *Min. House of Assem.*, pp. 611-12; *Senate Journal*, p. 382.

⁹ See files of the *Trenton Daily True American*. The issue of November 5, 1850, contains a statement *seriatim* of the issues at stake.

¹⁰ *Trenton Daily True American*, Nov. 16, 1850.

¹¹ The message of the new Governor, George F. Fort, was full of suggestions for correcting evils complained of at the time. Monopolies, the election instead of the appointment of the judiciary, land speculation and engrossment, property qualifications for the franchise, as well as labor legislation, were some of the subjects discussed. On these he advocated reform measures which he thought would "rectify many antiquated wrongs, restore to the people those rights and privileges of which they had been long deprived, ameliorate their condition in all the relations of life, impart a new and salutary impetus to the progressive tendencies of the age, equalize the burdens as well as the advantages of govern-

The bill of 1851¹² was the same as those introduced in preceding years, except that it abandoned the compulsory ten hour day for adults. As enacted, the provisions pertaining to children were amended in their application so as to include children in "any factory."¹³ As to these it forbade that any minor should "be admitted as a worker" under ten years of age and limited the hours for all minors in factories to ten a day and sixty a week. To enforce the law it provided a fine of \$50 for each offence, "to be sued for and recovered in an action of debt, in the name of the overseer of the poor," for the benefit of the minor.¹⁴ The following year an attempt was made to define the indefinite thing called a factory by declaring it to be "any building in which labor is employed to fabricate goods, wares, or utensils."¹⁵

This enactment was quite inadequate for its object. The age limit was probably too low to affect any import-

ment, elevate the character and moral power of the state, and give peace and concord to our glorius union."

Concerning child labor, he said, "Infant laborers in factories should also be protected from such excessive exactions as are calculated to destroy their physical and mental capacity for health and usefulness." Then referring to the consequences of child labor in England, he added, "It is our duty to guard against the occurrence of such evils within our jurisdiction." (*Message*, pp. 10 and 11.)

The *Trenton Daily True American* of May 15, 1851, had the following eulogy of the legislature of 1851. "You have removed the ancient landmarks of feudalism. No longer will your children be compelled to run riot in ignorance on account of your poverty. No longer will the merciless creditor deprive you of the power to pay demands and rob your family of the very means of obtaining a subsistence. No longer will your capacity to sit upon a jury be measured by the value of your property."

¹² House Bill 84, 1851.

¹³ The original application was only to cotton, woolen, silk, paper, glass and flax factories.

¹⁴ *Pub. Laws*, 1851, p. 322.

¹⁵ *Ibid.*, 1852, p. 63.

ant number of children. It is doubtful if, with a full enforcement, it would have seriously altered the practice. Moreover, the wording of the prohibiting clause permitted easy evasion. No provision whatever was made for determining accurately the age of any child which was brought in question. The age for the restriction of hours—twenty-one years—was unenforceably high for that day. And more than all, the provision for enforcement was totally weak. No one in particular was charged with bringing prosecutions or seeing that they were brought. Violation of the act was not made a misdemeanor or crime, so that prosecution might be brought by the ordinary prosecuting officers. The only officer mentioned with the enforcement was the overseer of the poor, in whose name the fine was to be sued for. But even he was not required to bring suit, although possibly it was understood that he would do so. It is not surprising that, of a measure of such limited pretensions and more limited potency, it should be recorded that no opposition appeared in the legislature.¹⁶ Yet it made one achievement. It committed the state for the first time to the policy of controlling the employment of children under their modern relations of employment.

It remains only to say that this imperfect act continued until 1883 the only formal declaration of the state on the employment of children. The only change was one in 1876 which made the restriction on hours more enforceable, though to no result, by altering its application to those children only who were under sixteen years old.¹⁷

Compulsory Attendance Law of 1874.—With the strengthening of an interest and ability to provide for

¹⁶ Trenton correspondent of the *Newark Advertiser*, Mar. 13, 1851. Quoted in *Rept. of Bureau of Statistics*, 1885, p. 264, footnote.

¹⁷ *Pub. Laws*, 1876, p. 306.

the future of children, there came naturally an agitation for coercive state action in their education. Considerations of school efficiency, as well as regard for the child, induced the school officials to lead in urging this proposal.¹⁸ After the public schools were made uniformly free in 1871, the economic excuse of parents for keeping their children out of school was so far weakened that the resistance to the proposal was diminished.¹⁹ Out of this agitation came the act of 1874.²⁰ This required every child between the ages of eight and thirteen years to attend some public or private school at least twelve weeks every year, six weeks at least to be consecutive, or to be instructed at home at least twelve weeks in the various branches taught in the public schools. Exemption was made of those physically or mentally unfit and also, by a proviso to the penalty clause, of those cases in which the parent was "unable, by reason of extreme poverty, to comply with the requirements of the law."

Observance and Results: The Child Labor Law.—The act of 1851 never had any force. It even appears to have been forgotten. At any rate, the school officials through-

¹⁸ See *Reports of State Superintendent of Public Instruction*.

¹⁹ In his report for 1871 the state superintendent took cognizance of the agitation and went so far as to say that the time would undoubtedly come when such a law would be demanded; that, having provided by taxation for free schools, he deemed it due to the taxpayers that, by further enactment, a full attendance of children should be secured during the school term. (P. 18.) The proposal received attention in 1872 in the message of Governor Randolph, who, however, opposed any compulsory law as conferring upon the state a power which "will almost inevitably precede the more inquisitorial guardianship, and more dangerous encroachments, as regards individual affairs." He thought it necessary to "bear for the time the deprivations and losses ever incident to the popularization of never so good a cause." *Messages and Official Papers*, p. 225.

²⁰ *Pub. Laws*, 1874, p. 135.

out the state, though complaining frequently of the employment of children as a reason for non-attendance at school, never refer to that law.²¹ Whether forgotten or not, its age limit was too low to have any important effect on the employment of children. A more significant comment on the observance of the law was that of Governor Joel Parker who, in his inaugural address in 1872, said there was reason to believe that the act of 1851 was often disregarded. He recommended a legislative investigation into the conditions of child labor.²² Other testimony collected is as indefinite as this and is less trustworthy. On the whole, it testifies to a conviction, on the part of those in a position to observe, that there was a very noticeable amount of employment of young children, but conveys only scanty information on the lower ages of child employees and indicates nothing at all as to whether the number under the age limit of ten years was noticeable.

Continuous and comparable statistics upon the number of children employed throughout the period of the act of 1851 do not exist. But some figures are at hand for the silk industry, which had a marvelous growth during the decade 1870 to 1880.²³ The data are from such different sources that the figures in the second column are not all comparable with each other and not at all comparable with those in the first column. But they point to a marked increase in the number of children employed, although the indefinite age group signified by "youth" and "children" destroys any significance for the observance of the law. Yet, from the data for this one industry, the inference is plausible that a large number

²¹ See *Rept. State Supt. Pub. Instr.*

²² *Inaugural Address, 1872*, p. 12.

²³ See Twelfth Census, *Manufactures*, Pt. II, p. 543.

TABLE I.
CHILDREN IN SILK INDUSTRY.¹

	"Youth" ²		"Children"	
	Number	Per cent ³	Number	Per cent ³
1870	1386	20	....	..
1874	....	..	1428 ⁴	26
1875	4535	25	2130 ⁴	25
1879	....	..	3763 ⁵	28
1880	5550	17	....	..
1881	....	..	3489 ⁶	25

¹ Arranged from data in *Repts. Bur. of Stat.*

² *Rept. Bur. of Stat.*, 1881, p. 151. Source unnamed.

³ Computed by writer.

⁴ For year ending Dec. 21, quoted in *Rept. Bur. Stat.* 1879, p. 106. Source unnamed.

⁵ Returns from 106 establishments, *Ibid.*, 1880, p. 82. The report for 1879 printed (p. 106) returns from 55 employers, showing 3648 "children" comprising 35 per cent of all employees. But the later figure is more comprehensive.

⁶ Returns from 105 establishments, *Ibid.*, 1881, p. 143-145.

of young children, even if over ten years, must have been employed, and evidence for the close of the period supports the inference.²⁴

The figures for the censuses of 1870 and 1880 show the following increase in the number of children employed under 16 years of age.²⁵ This shows that the number of such children employed increased nearly 100 per cent in the decade, although the general increase in the wage earners employed in manufacturing kept the increase in the proportion of children down to 17 per cent.

TABLE II.
CHILDREN UNDER SIXTEEN
1870-1880.

	Number	Per cent of Total Employees
1870	6,239	8.2
1880	12,157	9.6

²⁴ See below page 23 *et seq.*

²⁵ Twelfth Census, *Mfrs.*, Vol. II, p. 540.

The Compulsory Attendance Law.—A side light on the employment of children is thrown from the statistics of school attendance.²⁶ The following figures, compiled from

²⁶Such statistics have significance partly because the employment of children is one important reason for the non-attendance of children at school. It was later found at Trenton that about half of those withdrawing from school did so to go to work. (See below, p. 181). But this line of argument may not be followed too closely, for there are other causes of non-attendance and irregular attendance besides employment. The value of such a side light is further lessened by the fact that the law under consideration applied only to factory employment. So that a child might be out of school for any one of several employments,—as many were in agriculture,—and still not violate the law. Yet school attendance is significant in this matter for another reason independent of these qualifications. A community which fails to keep its children in school during their early years displays an indifference to the future of the children or a present necessity, either of which puts them early to work, and that too in a factory as well as in other occupations. The conditions as to school attendance during the period thus become of sufficient interest to note briefly.

The most desirable data would be those for the percentage of enrollment of all children in the population, under the age limit for employment. Those are not available. Such figures are furnished for the whole population within the school age, seven to eighteen years. But the figures are dependent on the returns of the school census, which is too unreliable to bear usage for this purpose. The state school tax was apportioned among the counties according to the assessed valuation of property, while the funds when raised were distributed according to the census of school children in the county. The motive to pad the census returns was irresistible. Then also the appointment of enumerators was made by local officials and their work was subject to no central supervision until well into the next period. Between incompetent enumerators, unorganized methods, and an inducement to local padding, the returns are too suspicious to be significant for the present purpose. For the whole effect upon enrollment due to changes in the employment of children, or due to better enforcement of attendance, might be multiplied or even more than negatived in the percentages of enrollment by errors from those sources. The reports of the State Superintendent of Public Instruction contain discussions of this inaccuracy showing improbable variations in the returns amounting to as much as 12 per cent. *Report for 1885*, p. 18. See also 1875, App., p. 17; 1892, p. 4; 1895, App., p. 17.

the annual reports of the State Superintendent of Public Instruction, show the percentage which the average daily attendance was of the total enrollment in the public schools in eleven cities of the state. The data are too incomplete and uncertain to permit an average for all the cities, so they are given, such as they are, for each city. The large influence of other factors, besides the

TABLE III.

PERCENTAGE OF AVERAGE DAILY ATTENDANCE OF TOTAL ENROLLMENT.²⁷

Year	Bayonne	Elizabeth	Hoboken	Jersey City	Newark	New Brunswick	Paterson	Trenton	Camden	Bridgeton	Millville
1857	....	45.5	72.0	27.6	37.2	....	52.9	49.4	44.0	85.2	....
1858	....	44.6	49.5	35.9	42.9	....	....	49.4	43.2	90.0	36.2
1859	....	50.5	47.5	35.5	46.7	....	56.7	63.4	48.6	64.3	36.1
1860	....	....	....	....	....	....	....	....	....	....	....
1861	45.2	55.4	50.0	41.5	49.0	51.8	47.0	56.6	55.6	54.7	40.1
1862	47.7	55.5	50.8	39.1	55.6	49.6	53.0	73.2	....	61.4	44.3
1863	49.8	57.5	41.6	37.0	49.8	....	60.0	85.8	60.5	68.4	47.2
1864	....	43.9	37.4	38.0	49.8	50.7	61.3	....	....	....	48.2
1865	....	....	....	....	....	....	....	....	....	....	....
1866	....	....	....	....	....	....	....	....	....	....	....
1867	....	....	....	....	....	....	....	....	....	....	....
1868	51.4	50.8	46.5	41.4	....	60.9	79.3	....	....	61.2	....
1869	42.4	51.5	45.0	41.3	58.1	58.3	56.6	80.4	67.3	66.9	53.0
1870	48.7	42.4	50.3	45.1	57.7	58.8	57.1	59.6	64.2	58.6	40.9

Next in desirability to the percentages of enrollment are the percentages of attendance. An improvement in the regularity of attendance would be cognate with a lessening of employment of young children, though the amount of the former can indicate nothing as to the amount of the latter.

²⁷ Compiled, under direction of the writer, from the annual reports of the State Superintendent of Public Instruction.

employment of the children, upon the regularity or intermittency of attendance at school, forbids any close reasoning on such data as this. In the present case, the prohibition is the more complete because of suspicious variations in the percentages from year to year. But it unquestionably indicates a situation with reference to provision for the future of children in which the employment of young children would be rife.

The agitation and passage of the compulsory attendance law of 1874 tended to improve these conditions. But circumstances combined to reduce the effectiveness of that measure. In the first place, it was inherently weak. The exemption from the penalty on account of poverty, however justifiable it may have appeared, took the force out of the act for most of those with whom the purpose of the law was concerned. And besides this, it was not made the duty of any specific person to see that the law was observed.²⁸

In addition to its inherent weakness, three considerations in its operation tended to its neglect. Most of those compelled to attend would do so only for the prescribed time of twelve weeks. This would result in such a coming and going of pupils that the work of instruction would be seriously impaired. Again, the enforcement of the law would cause an influx of unwilling and incorrigible pupils who could be cared for only by special provisions, which most communities were unwilling or unable to furnish.²⁹ That these were not complained of more fre-

²⁸ This defect was noted by the Superintendent of Public Instruction in his discussion of the law. See *Rept.* 1874, p. 17.

²⁹ In 1872, when the compulsory law was being agitated and before it was passed, the superintendent of schools for New Brunswick said it would be necessary, before passing a compulsory law, to permit or require cities and towns to establish an ungraded reformatory school for truants and incorrigibles. *Rept. Supt. Pub. Instr.* 1872, App. p. 7-8.

quently was probably due to the fact that no pretense was made at enforcing the law. Finally, the rock on which it was actually wrecked was the unwillingness or inability of local boards to provide the additional accommodations for the additional pupils. Most of the larger towns and cities were already behindhand in providing for those children who were willing to attend. To enforce the attendance of those still unschooled would have involved a bonding and taxing which many communities would not and some could not stand. Complaints of this difficulty became increasingly frequent.³⁰ The sentiment in favor of compulsory attendance was not yet strong enough to induce people to pay the cost.

Yet in spite of these strongly deterrent influences, there seems to have been some improvement with the passage of the law. The following table gives the total enrollment, the average daily attendance, and the percentage of the latter upon the former for twelve of the principal manufacturing centers of the state.

It will be seen that each of the first five years has a percentage of attendance close to that of the average for them all; that from 1876 the yearly percentage shows a marked rise and remains close to the average for the remaining five years. This rise of average attendance between the two periods of nearly five points followed the enactment of the law after one year, during which

During the year 1874-1875, it was attempted to meet this want for Newark in the establishment of the Newark City Home at Verona, about eight miles north of Newark. But the Superintendent at the time said that it afforded only about half the needed accommodations. (*Rept. Supt. Pub. Instr.* 1875, App., p. 14.) This school has since been developed as an important part of the present model provision by Newark for the enforcement of the compulsory attendance law.

³⁰ See *Message of Gov. Parker*, 1875, p. 7; also *Repts. Supt. Pub. Instr.*

TABLE IV.

PERCENTAGE OF DAILY ATTENDANCE OF ENROLLMENT
1871-1880.³¹

Year	Total Enrollm't	Ave. Daily Attend'ce	Per Cent	Year	Total Enrollm't	Ave. Daily Attend'ce	Per Cent
1871	55,876	31,771	56.8	1876	69,884	41,250	59.0
1872	60,093	32,376	54.9	1877	71,681	42,592	59.4
1873	60,699	32,281	53.3	1878	74,164	45,069	60.8
1874	65,203	37,235	56.2	1879	75,732	45,471	60.1
1875	67,357	36,982	54.9	1880	77,783	47,045	60.5
For 5 yrs.	309,228	170,648	55.3	For 5 yrs.	369,244	221,427	60.0

there was a fall of 1.3 points. On the whole the law would seem to have had some effect upon the regularity of attendance.

Conditions at the End of the Period.—How little effective during this period had been the policy of the state in behalf of its children may be seen in the conditions at the time of the agitation and passage of the law of 1883. First as to the number of child workers. The Bureau of Statistics of Labor and Industry made in 1880 a fairly comprehensive inquiry into the manufactures of the state. The returns from 734 establishments showed 10,002 "children" employed, who comprised 17.3 per cent of all the employees in those establishments.³² The United States census of manufactures for the same year showed 12,152 children under sixteen years, comprising 9.6 per cent of all employees.³³ The difference between these is due probably in chief part to the fact that the Bureau of Statistics returns were only from the larger factory estab-

³¹ Compiled, under the direction of the writer, from data in the reports of the Superintendent of Public Instruction.

³² Compiled from tables, pp. 73 to 155.

³³ Twelfth Census, Vol. II, *Manufactures*, p. 540.

lishments, while the census included all the smaller enterprises, in which the possibilities of business organization do not permit as many children to be used as in the larger establishments.

These figures show that a large number of children were employed, but indicate nothing as to the lower ages of the children, or as to whether the law was observed or not. The Bureau of Statistics for several years printed returns from employees bearing on these points, but the number reporting was too limited and the figures are otherwise under suspicion. The most comprehensive and probable are those in the report of 1880.³⁴ Employees from 137 different establishments reported 4871 children between ten and fifteen years employed where they were and 476 children under ten years of age. Comments from wage earners in the report of 1881³⁵ contain frequent assertions that children seven, eight, and nine years old were at work. These figures are not safe within even a considerable margin of their exact amount. But it may be safely concluded from them that a considerable number of children under age were employed.³⁶

Some further light on the lower ages of child workers is obtained from an investigation of factory children in 1884. The act of 1883 provided for a factory inspector. In the discharge of his duties during 1884, he made a

³⁴ Pages 34-36.

³⁵ Pages 97-100.

³⁶ The absence of any indication as to how the ages of the children reported were known to the employees reporting them admits the possibility that the statements were made merely on the appearance of the children, a basis which is unreliable at best, and exceedingly treacherous when used by those inclined to overstate the facts. This is strengthened by the frequency of round numbers in fives and tens among the returns. But, on the other hand, the fellow-employees of the children are best situated of all persons for making an estimate without positive evidence for each one.

careful inquiry into the condition of child employees. He found³⁸ that the average age at which they had gone to work was nine years. As a rule they had been sent to school to about their sixth or seventh year and had been taken out two years later to work. Almost all the children at the time they were examined by the inspector said they were between twelve and fifteen years old. But it should be considered that the act of 1883 had raised the age limit for boys to twelve and for girls to fourteen and that many actually under those ages would claim to be of the new minimum age. Against this claim is the testimony of the children showing that the average age at which they began work was nine years. It is highly improbable that during the three to six years since these children had begun to work,—from age nine to age twelve or fifteen,—the accretions to the force of child workers from the youngest ages had so far and so suddenly diminished that only a negligible fraction of those then employed were under the legal minimum.

As to the hours of employment for children, the reports of the Bureau of Statistics show that the ten hour day, or even less, had become nearly universal as the scheduled working day. But a great deal of overtime was worked, so that practically the hours were longer. This overtime affected the children as well as the older employees. Of the 137 establishments reported by employees in 1880, only eleven were working regularly more than ten hours a day.³⁹ But 43 of the 137 were reported as working children overtime more or less. Similar returns from employees in 1881⁴⁰ included statements of the

³⁸ *Rept. Insp. Fact.* 1884, pp. 14-19.

³⁹ Almost all of these ran eleven hours. Only nine were reported as regularly running more than 60 hours a week. Two of these ran 62 hours, two 64 hours, four 66 hours, and one 72 hours.

⁴⁰ *Rept. Bur. Stat.* 1881, pp. 8-9.

average number of hours worked during busy seasons. The averages for the following child employing industries were reported thus: cotton mills, 11 1-4 hours; silk mills, 10 1-5; woolen mills, 10 11-13. The report says that the hours were longest in those industries where women and children were largely employed.⁴¹ In his investigation of 1884, the factory inspector found that all the children questioned had been accustomed to work ten hours a day, and many of them thirteen hours and over through overtime. Fourteen hours was in some cases the time worked, the excuse being that the extra time was allowed off their Saturday labor.

The illiteracy of the child employees as reported by the inspector corresponded to the other facts. In 1883 he wrote "many of them had never been inside of a school room . . . Not a few of these were unable to give the name of the state in which their places of residence were located."⁴² From his investigation of 1884 he concluded "Not 2 per cent know anything about grammar or have ever been taught any . . . The vast majority could not spell words of more than one syllable, and very many could not spell at all. About 10 per cent could answer questions in simple multiplication. Of the remaining 90 per cent, the majority could not add up the smallest numbers. At least 90 per cent know absolutely nothing about simple geographical and historical questions. The number able to read and write, in a distinguishable way, was shockingly small, and very many could neither read nor write even their own names. Very few of these children, the majority of whom were born in the United States, ever heard of George Washington. Over 95 per cent never heard of the Revolutionary War, Abraham

⁴¹*Rept. Bur. Stat.*, 1881, p. 6.

⁴²*Rept. Insp. Fact.*, 1883, p. 9.

Lincoln, the Civil War, Governor Abbett,⁴³ or President Arthur. At least 60 per cent never heard of the United States or Europe. At least 30 per cent could not name the city in which they lived, and quite a number only knew the name of the street where they were housed. Many who had heard of the United States could not say where they were Ninety-five per cent could answer no question about other states or cities of the United States."⁴⁴

Illuminating testimony to the ineffectiveness of the law is given in the report of the inspector for 1884.⁴⁵ In response to circular letters sent to employers notifying them of the laws, new and old, placed under his jurisdiction for enforcement, he found that in nearly all cases the replies expressed "an utter ignorance about the ten hour and other acts Some of these laws have been on our statute book for years . . . and yet few had any knowledge of them and their observance was the exception."

The evidence reviewed with regard to the results of the policy during this period does not offer a very definite measure of the success. Yet these conclusions may be stated. There was a very considerable increase in the number of children employed in manufacturing. This was part of the industrial development of the state and the rise of manufacturing cities. It would appear also that the employment of very young children increased greatly in numbers, and probably proportionately, although no statement concerning the latter can be made

⁴³ Then Governor of New Jersey.

⁴⁴ *Rept. Insp. Fact.*, 1884, pp. 17-18. The allegations in this respect were questioned. To this the inspector replied in his next report that the facts were, as a matter of truth, even worse than reported. *Rept.* 1885, p. 9.

⁴⁵ Page 10.

with certainty. The number of children employed under ten years cannot be stated, but the evidence is ample to show that the law of 1851 had no effect in restricting such employment. There was some improvement in the school attendance, but not enough to indicate any effect on child employment.

The period as a whole does not reveal much approach toward a definite policy. The sentiment in behalf of restricting child employment was neither intense enough nor constant enough to swing the power of the state steadily toward a consistent course in the matter. The act of 1851 was passed on a wave of reform which subsided before the more compelling interests of the war and the industrial development that followed. In these events the law was all but forgotten. The course of child employment was left to the free play of economic influences alone. When the sentiment against it was revived toward the end of the seventies, the advocates of restriction had to build up from the ground, except for the foundations in the precedent which had recognized the principle of a policy of restriction.

A SETTLED POLICY: THE STANDARD.

CHAPTER IV.

LIMITED AND UNINFORMED PUBLIC SENTIMENT

1883 TO 1904.

The Child Labor Law of 1883.—With the close of the seventies there began to appear an agitation for a more vigorous policy toward child employment. This found its leaders among those of the wage earners who became active at that time both for organization and for legislation on their own behalf. One of the earliest fruits of the labor agitation was the establishment of the Bureau of Statistics of Labor and Industry in 1878. From the first, the chief of this bureau gave sympathetic attention to the demands of the wage earners and attempted to conduct investigations into the facts bearing on their proposals. Part of this attention was given to child labor. The early reports are full of fragmentary data, discussions of the evils of child employment, and pleadings for effective legislation.

The agitation soon appeared in the legislature. In 1880 a bill was introduced into the House of Assembly to raise the age limit to twelve years and to strengthen the enforcement of the act of 1851.¹ This received some consid-

¹House Bill 146. This would have been ineffective. It merely substituted the word "twelve" for the word "ten" in the earlier law, leaving unchanged the loose phraseology of the prohibiting clause. To strengthen the enforcement, it made the overseers of the poor,—in whose name prosecutions were to be brought,—subject to a penalty of \$25 for failure to prosecute cases when called to their attention.

eration in the House, but it never reached a vote. The interest of the public at large does not seem to have been very great. At least no mention of the bill, or of any public discussion of it, could be found in either of two leading newspapers of the day. In 1881 the same bill was introduced again.² This time it passed the House, but was never reported from committee in the Senate.³ It assumed enough importance this time to win bare notice, but no comment, from the newspapers. When the legislature met in 1882 a new and much more thorough bill was introduced.⁴ The most distinctive feature was the provision, though an imperfect one, for an inspector of factories. The details in which its provisions were framed would probably have proved very ineffective. Yet, when compared with anything that had been offered, the bill shows a much more thorough understanding of the administrative problem involved. And, besides, it took very advanced ground on the matter of hours for women and minors. The bill passed the House easily,⁵ but was so

This penalty was to be recoverable in an action of debt. But no particular person was charged with bringing such action. It was left to "any citizen", whose only inducement to trouble himself about the matter, aside from any interest he might have in seeing the law observed, was half the penalty recovered.

² House Bill 235.

³ *Min. House of Assem.*, 1881, p. 729.

⁴ House Bill 184. This provided for a twelve year age limit which was to apply to mercantile employments as well as to those of manufacturing and mining. The employment of children between the ages of twelve and fifteen was to be conditioned upon their having attended school for at least twenty consecutive weeks during the twelve months preceding employment, and upon their furnishing their employers with certificates from their teachers designed to witness to such attendance. The hours for minors under twenty-one years and for adult women was limited, in the employments prescribed, to ten hours a day and sixty a week. Penalties were provided for both employers and parents who violated the act.

⁵ *Min. House of Assem.*, 1882.

amended in the Senate⁶ that the House could not concur and abandoned the measure.⁷

It is deserving of notice that even this was a gain for the agitation over the existing law. It raised the age limit to twelve years. It recognized the device, though in a crude form, of documentary evidence that the minimum age and other conditions of employment are complied with. And even in the matter of enforcement, the county superintendents might reasonably be expected to show more energy than the overseers of the poor, although they would fall far short of a uniform and thorough administration of the law. Possibly it was the expectation of such an outcome that induced the opponents of the bill to concede the other features. But in any case the concessions were now a matter of record to serve as precedents for further agitation.

These details are of interest as showing the progress in the agitation for a more effective child labor law. The impotent measure of 1880 did not have support enough to get through the House. In 1881 it had strength to pass the House, but promptly succumbed in the Senate. By 1882 a measure which its friends hoped and its opponents feared would be much more effective than its predecessors, not only passed the House with scarcely any opposition, but commanded the time of the Senate on several occasions, and survived the opposition there in a form which expressed a measurable advance over the effective aspirations of either the existing law or the preceding bills. Yet another year was required before

⁶ *Senate Journal*, 1882, pp. 879, 931.

⁷ *Min. House of Assem.*, 1882, p. 1001. The friends of the bill regarded the amendments as fatal, especially in putting the enforcement in the hands of the county superintendents of schools, instead of with a factory inspector, as provided in the House. See *Newark Daily Advertiser*, Mar. 28, 1882.

the pressure of the agitation was sufficient to put through what was thought to be a workable law.

When the legislature met in 1883, interest in the proposed legislation had grown much. The *Newark Daily Advertiser* said editorially that the prospects for an act were "excellent"; that the arguments for it were "innumerable and of great force and only extreme selfishness has prevented an enactment long ago."⁸ The same paper, a year later, said it was a "pressure of public opinion" that secured the passage of the act.⁹ The progress of the bill was noted in the newspapers, at least one of which showed sympathetic interest and reported the debates upon it in some detail.^{9a} The greater interest is further indicated by the fact that both branches of the legislature had child labor bills before them. Yet the leaders of this interest, the men who stirred things up and lobbied for the measure, appear to have been the labor leaders of the day.

The bill introduced into the House¹⁰ was less radical than the amended bill turned out by the Senate the preceding year. It embodied one idea, however, of administrative value. It required employers to keep a certificate of age, signed by some member of the local school board, for every child under sixteen years old. Such a certificate, merely, would have been of only partial effect. But the feature of an employer's register for all children within a prescribed zone above the minimum age has, in its later forms, been an effective aid to the enforcement of the law. This bill passed the House without amendment.¹¹

⁸ Jan. 11, 1883.

⁹ Mar. 5, 1884.

^{9a} *Newark Daily Advertiser*.

¹⁰ House Bill 18.

¹¹ *Min. House of Assem.*, 1883, p. 260.

In the Senate it was put off repeatedly and then indefinitely,¹² being supplanted by the Senate's own bill.

The Senate bill¹³ underwent several lengthy and heated debates, resulting in some important amendments, but finally passed¹⁴ and was quickly put through the House without further change.¹⁵ This law¹⁶ applied only to mining and manufacturing, although the original bill included mercantile employments also. It fixed a minimum age limit of twelve years for boys and fourteen for girls, in spite of efforts to reduce the age to twelve for both. For children between these minima and fifteen years, it prescribed twelve¹⁷ consecutive weeks of attendance at some public or approved private day or night school, provided, where necessary in the case of orphans, the guardian might get from the inspector a permit for employment without such attendance. Those children were required to bring to their employers from their teachers certificates of such attendance. The enforceability of the age limit, however, was completely destroyed as against deceitful parents and willing employers by a proviso added to the section on penalties that "a certificate of the age of the minor, made by him or her and by his or her parent or guardian at the time of employment, shall be conclusive evidence of the age of such minor upon any trial for the violation of this act." On the matter of hours, the original provision fixed the limit for all minors and for women at not over ten a day or sixty a week. It was then attempted to remove all restriction except for minors under sixteen years. Then

¹² *Senate Journal*, 1883, p. 648.

¹³ Senate Bill 64.

¹⁴ *Senate Journal*, 1883, p. 362.

¹⁵ *Min. House of Assem.*, 1883, pp. 555-6.

¹⁶ *Pub. Laws*, 1883, pp. 59-61.

¹⁷ The original provision was for twenty weeks.

the whole matter was stricken from the bill, but was later returned and, as finally enacted, limited hours for children under fourteen to "an average" of ten a day or sixty a week. One inspector was provided for, as in the bill of 1882. But, unlike that bill, his appointment by the Governor was made subject to approval by the Senate, his salary was fixed at \$1200 instead of \$1000, and the limit to his expenses was placed at \$500 instead of \$300. This provision for inspection was at one time supplanted by an amendment giving the enforcement to the county superintendents. The clause providing an inspector was said to be the only part objected to in the final bill.¹⁸

The discussion brought out the usual arguments for and against such a proposal. The strength of its defenders lay in the argument from the experience of England, which was frequently cited by general reference. But no specific or accurate data were given on the condition of child labor in New Jersey, nor was a detailed analysis of the effects of child labor in England shown as evidence of the need of preventive legislation. Sentiment, justified by experience but uninformed on the reasons for its justification, and the growing political importance of organized labor, were the most convincing arguments in behalf of the bill. The opponents similarly had little in point to offer. The necessities of the widow and orphan were the strongest argument they presented. The arguments from the experience of England were unanswered except to say that "they did not apply to conditions in New Jersey." But what the difference in conditions was and why the lessons from England did not apply, it was not attempted to make plain. The most conspicuous objection was that the measure would cripple industry. That

¹⁸ *Newark Daily Advertiser*, Feb. 14, 1883.

it would do that in the least degree was held conclusive as against the claims of its advocates.

This act was the utmost that New Jersey could do after four years of agitation. To many of that day it appeared to be a great achievement. Senator Stainsby, the leading defender of the bill before the Senate, thought it was one of the most important bills ever brought before the legislature.¹⁹ The *Newark Daily Advertiser* reported that it was believed that the bill was "strong and sweeping", and that it would "have the effect of stopping the employment of mere infants in shops."²⁰ According to the chief of the Bureau of Statistics, the law, "although far from satisfactory, was regarded as one of the most momentous measures of labor legislation yet effected in this state."²¹ It was, indeed, a measurable advance over the previous conditions. But its ambitions far exceeded the adequacy of its provisions for attaining them. It was the resultant of the large aspirations and small practical wisdom of the agitators on the one hand, and the small sentiment and large legislative shrewdness of the opponents of the policy on the other. It failed in almost all the points necessary for an effective policy. This will be discussed later. But it was an initial attempt that furnished experience which guided the sentiment of the state when that was ready for another endeavor to carry out its policy with effect.

In the act of 1883 and in the supplementary legislation there will be observed an attempt to establish three different minimum requirements to be met by children before their employment would be permitted. These were a minimum age, a minimum attendance at school, and a

¹⁹ *Newark Daily Journal*, Feb. 14, 1883.

²⁰ Feb. 27, 1883.

²¹ *Rept. Bur. Stat.* 1885, p. 265.

minimum physical state. The provisions in the act of 1883 and the attempts to improve upon them will be noted for each of these minimum standards in order.

Minimum Age Limit—By the act of 1883 the legal minimum age was raised from the uniform limit of ten years, prescribed in the law of 1851, to a dual limit of twelve for boys and fourteen for girls, where it remained for two decades. This score of years, however, was not without agitation for a still higher age limit. The chief inspector, in his annual reports, urged an increase in the permissive age.²² These recommendations were approved, though somewhat perfunctorily, in the messages of two of the governors.²³ And even employers are quoted as favoring a higher age.²⁴ But this agitation did not gain sufficient strength to embody its object in the statutes. On the contrary, the department charged with maintaining the established age limit came, during the last five years of the century, into such inefficient hands and under such demoralizing political influences that it is doubtful if there was in fact any restriction worth the name on the employment of children in factories.²⁵ This breakdown in the administration of the law provoked a number of attempts to secure remedial legislation. Most of these aimed at a strengthening of the administration of the law. But one measure, introduced at the request of the Federation of Trades and Labor Unions in 1899²⁶ and designed to strengthen

²² The act of 1888, p. 7, urges raising age for boys to fourteen; that of 1891, p. 7, urges thirteen years for boys; and that of 1892, p. 8, urges fourteen again.

²³ *Message of Gov. Green*, 1889, p. 29; *Message of Gov. Abbott*, 1893, p. 49.

²⁴ *Rept. Insp. Fact.*, 1894, p. 21.

²⁵ See below, p. 177 *et seq.*

²⁶ House Bill 223. *Proceedings Convention F. T. and L. U.*, 1899, p. 41.

the whole law, deserves notice in this connection for its clause making the age limit fourteen years for boys as well as girls. This bill was held in committee until the day before adjournment, when it passed the House²⁷ but too late to get before the Senate.

This lapse in the administration of the child labor law eventually aroused, among people theretofore apathetic, a sentiment which gained force from the agitation in other states. The demand was at first for a stricter enforcement of the existing statute. But it soon directed itself toward a higher age limit also, and finally, when the general discussion revealed administrative weakness in the law as it was, it demanded a complete overhauling of the legislation on the subject. This movement will require greater attention at a later point in the discussion. It is to be noted here merely that because of this agitation the age limit for boys was raised in 1903 from twelve years to be uniform with that of girls at fourteen years.²⁸

The provisions for a minimum age limit in the act of 1883 were defective in several respects. From the point of view of administration, enforceability was greatly weakened by the looseness of the phraseology of the prohibiting clause, which provided merely that no child as described "shall be employed in any factory", etc. The inspector immediately met with evasions by employers who declared that children found in their factories were not in their employ.²⁹ It was impracticable for the inspector to prove in court that they were, although he was morally sure of it. Others were found who were engaged and paid on a sub-contract system by employees of the establishment and not by the proprie-

²⁷ *Min. House of Assem.*, 1899, p. 491.

²⁸ *Pub. Laws*, 1903, p. 386.

tor.²⁹ The law's penalties upon "employers" did not reach such sub-employers as these. Finally, the force of the penalties was entirely dissipated by the proviso which made the certificates of age from the parents conclusive as to the age in any prosecution. These were not made under oath and many of them were clearly false and were so considered in many cases, even by the employers.²⁹ But the framing of the law left the burden of proving the deception upon the inspector, who was at an obviously great disadvantage as against the parent's allegation, especially when the child was foreign born. In this situation, employers needed merely to provide themselves with a certificate, regardless of the true age of the child. This is what they all did, some openly declaring that so long as it protected them they would not question its accuracy.²⁹ It is not surprising that, when the law had been in operation but a few months, the inspector complained, "It is hardly possible to obtain a conviction before the courts so long as the . . . law permits the certificate of the parent or guardian to be conclusive evidence of a child's age."³⁰

This exemption of the employer is not without defense. It is a fair question how far, if at all, the responsibility for determining the true age of a child should be placed upon the employer. It not only adds to the other cares of his business a difficult and troublesome duty, but it also subjects him to liability through the mistakes and deceptions of parents and others to whom he must go for evidence. It would cause the best intentioned employers to be penalized at times. Administrative considerations require that the employer be compelled, through some device, to use care. But they

²⁹ *Rept. Insp. Fact.*, 1884, pp. 22-3.

³⁰ *Ibid.*, 1883, p. 6.

do not necessarily demand that the whole responsibility be put upon him. The law of 1883, however, was at fault in relieving the employer too much. But experience soon showed that it was more imperfect in the character of the evidence of age which it accepted.

In the hope of meeting this defect in the law, the inspector, in his first report, recommended that certificates of age be required from the registry of births, and that in the absence of those, the parents' declarations be supported by their affidavits.³¹ This, with other suggestions of the inspector, was laid before the legislature by the Governor in his message.³² When the legislature met, the legislative committee of the Federation of Trades and Labor Unions had a bill introduced into the Senate³³ embodying some of the inspector's recommendations. By section four, which remained unchanged in the final act,³⁴ parents were required to furnish the inspector on demand a certificate from the office of registration of births, or, in the want of that, an affidavit of the age of the child. False swearing, "knowingly" done, was subjected to penalty as perjury. These affidavits were made conclusive as to the age of a child in any prosecution of an employer. Also the method of prosecution was changed from that of criminal procedure to that of an action for debt in which the penalty was sued for by the inspector.

These amendments were of doubtful value. The new procedure for prosecution was an improvement, but its greater simplicity and expeditiousness could avail little when no violation could be proved. The reliable official

³¹ *Rept. Insp. Fact.*, p. 10.

³² *Annual Message Gov. Ludlow*, 1884, p. 21.

³³ Senate Bill 2, 1884. *Rept. Insp. Fact.*, 1884, p. 6.

³⁴ Act of April 17, 1884. *Pub. Laws*, pp. 200-202.

certificates of birth were authorized by the law but not required as a condition of employment. Of course they were not used, since the parent's affidavit, which could be made to suit the case, was accepted by the law. Parents would swear to false affidavits and employers did not care if they did, since the affidavit *per se* protected them. The parents could not be reached, for the crime of perjury is one of the most difficult to prove in any case; and here this difficulty was aggravated by that of proving a child's age to be other than that alleged by his parents. Besides, there was often nothing against which a judgment could be executed if granted. Probably the law in this form did restrain some who would otherwise have disregarded it.³⁵ But in general it was weak.³⁶ No further changes in this matter, and none at all in the others noted, were made in the law until the whole code was remodeled in 1904. For a full score of years the policy of the state lost in effectiveness because of the internal defects in the law noted above.³⁷

³⁵ *Rept. Insp. Fact.*, 1884, p. 20.

³⁶ *Ibid.* Also reports for 1885, p. 28; 1901, p. 229; 1903, p. 4. "False affidavits are the root of the evil."

³⁷ There was some unsuccessful agitation for amendment, however. The bill which became the general factory act of 1885 had a provision by which all persons found in any part of a factory at other times than meal hours should be deemed to be employees for the purposes of the act. (Senate Bill 154, 1885, Sec. 24.) This would have prevented employers from evading responsibility by denying that a child in question was an employee of theirs. It was stricken out, however. It was again before the legislature in 1886 in a bill supplementing the general factory act of 1885 just mentioned. But this bill failed to pass. (House Bill 218, 1886, Sec. 12.)

Concerning the administrative needs for a better determination of the age of children, the inspector urged in his report for 1894 the "necessity" for an employer's register of all children under sixteen years in his employ. (P. 29.) But no attention was paid to this. A bill introduced in 1899 at the instance of the labor organ-

Minimum School Attendance.—The second minimum requirement as a condition for employment was a prescribed amount of schooling. Section 2 of the act of 1883 aimed to secure this to every factory child, from the minimum age for employment up to fifteen years.³⁸ By a provision in identical terms, a section of the compulsory attendance law of 1885 sought to secure this schooling to such children employed “in any business whatever.”³⁹ These enactments remained unchanged throughout the period.

This legislation for a minimum amount of schooling may be attacked as too meagre for the interest of the children on whose behalf it was made a part of the state’s policy. But aside from that it was forceless for the measure of that interest actually sought. Practical conditions hindered the child from leaving work to attend day school. In the first place the employer did not like it. It increased the changes among his child employees and thus interfered with the organization of his force. Then the teachers did not like it. It interfered with the organization of their work. Such pupils would seldom fall in well at the stage which the group had reached. And special attention to fit them in appeared lost when they left at the expiration of the prescribed time. More

izations, in addition to raising the age limit to fourteen years as noted above, required employers to obtain from all children between fourteen and sixteen years, a certificate, signed by parent or guardian and the principal of the school last attended, giving the name, residence, and age of the child. This would have added to the statement by the parents to the employer the record of the child’s age as given to the school officers. That would have been a helpful check upon false statement of age and would have afforded the valuable administrative device of an employer’s file of documentary evidence for every child within a prescribed limit above the minimum age.

³⁸ See above, page 33.

³⁹ Act of April 20, 1885, Sec. 2. *Pub. Laws*, 1885, p. 281.

than this was the effect on discipline. Such children usually come from their period of work with an increased spirit of "freshness" and independence which aggravates the task of keeping them in line during their unwilling attendance. Finally, many children do not like it. Those who are sent or allowed to go to work early, include many who are sent or permitted to go because they do not like to go to school.⁴⁰ For these reasons it was the night school rather than the day school that was attended in order to comply with the law. But night schools were not generally provided. Of those that were, many were managed perfunctorily and attended in the same spirit simply to meet the letter of the statute. Then, attendance at night school was not at all equivalent to attendance at day school, although the law accepted it as such. The night session is shorter than the day session and is less profitable hour for hour because of the physical exhaustion of the day's work on the child under fifteen, and because attendance is much more irregular. These defects quickly appeared to the early inspectors and were repeatedly pointed out.⁴¹ They

⁴⁰ In an investigation by the Bureau of Statistics in 1903 into the conditions of nearly a thousand factory children, each was asked whether he preferred to go to school. The answers of those under fifteen are tabulated below.

Age	Total	Preferred School		Per cent of Total	
		Yes	No		N o
12	5	0	5	0	100
13	21	3	18	14	86
14	183	23	160	13	87
All Ages	209	26	183	13	87

⁴¹ The Inspector of Factories in his report for 1888, p. 7, discusses these points in part. He found this section so difficult to enforce

also offered suggestions to remedy the matter.⁴²

This criticism and agitation brought no results, however, until 1903. In that year the wave of popular feeling in behalf of a stronger protective policy for children raised both the minimum age limit⁴³ and the compulsory school age⁴⁴ to fourteen years, and thereby cut off two of the three years from twelve to fifteen during which the prescribed minimum of school attendance was required. For the remaining year it was abandoned.⁴⁵

Minimum Physical Condition.—The third minimum that the law was “nearly, if not quite, a dead letter.” The night schools, in his opinion, did not accomplish the object aimed at. He thought “the half time system for all children up to fifteen would be a better educational provision.” (*Rept.* 1887, p. 9.) For other criticisms, see reports for 1897, p. 11; 1902, pp. 14, 238. One deputy inspector complained that the law compelled children who had already been in the higher classes of the schools and who wished to work, to attend night school for three months each year. *Rept. Insp. Fact.*, 1890, p. 73.

⁴² *Report* for 1888, p. 7, recommends that the educational restriction be abolished and that the age limit be made fourteen for both boys and girls. In 1891, p. 64, a deputy inspector recommended a nine hour day for children under fifteen in order to enable them to go to night school. In his report for 1897, p. 12, the inspector recommended that in communities where employment of children ceases in the summer time, as in the glass industry, summer day schools be opened for the children employed during the rest of the year.

⁴³ See above, p. 37.

⁴⁴ Act of October 19, 1903, sec. 153, *Pub. Laws*, p. 59.

⁴⁵ As an index of the earlier intention of the legislature in this matter, it ought to be noted that in a general revision of the school law in 1900, the period of required attendance for employed children was increased to “at least sixteen weeks, in two terms of eight consecutive weeks each.” But a “week” at night school was reduced from five to four evenings. This act of revision was declared unconstitutional but on grounds not affecting the matter here involved. It was replaced by a similar act in 1902. This act in turn being found unconstitutional, the general law of October 1903 was passed. This, as related in the text, raised the compulsory age to fourteen and, with the increase in the minimum age limit earlier in the year, disposed of the matter.

condition for employment takes account of the fact that a child may have reached a prescribed age and attained a prescribed education and yet, because of imperfect physical development, still need to be withheld from labor in order to insure a sufficient physique for later years or prevent cruel suffering for the present. To this end, an act of 1884, enlarging the staff of inspectors, contained a provision empowering the inspectors to demand "a certificate of physical fitness" from a physician in the case of children apparently unable to work and to forbid the employment of a child who could not obtain such a certificate.⁴⁶ The maintenance of such a minimum is a hard matter at best because of the difficulty of prescribing a minimum physical standard that will apply to all cases. But this law left the minimum degree of "physical fitness" entirely undefined and then left each parent to select his own physician to make the definition in the case of his child. This could not but result in wide irregularity if observed. And it would not be observed except in extreme cases, for parents would consult their family physician or some other who would be moved to decide as the parents wished.

Hours for Children: Laws of 1883 and 1885.—Besides prescribing minimum conditions which must be complied with before a child may become employed at all, the state has also attempted to regulate matters affecting those children, still minors, whom it permits to be employed. Such are the hours of labor and matters affecting health and safety. Reference is not here made to general laws applying to all employees, but to those special enactments springing from a solicitude for the future interests of growing children. The legislation on hours will be first considered.

⁴⁶*Pub. Laws*, 1884, p. 201, sec. 3.

It will be recollected that when the act of 1883 first came before the legislature, like the bill of 1882, it established a ten hour day and a sixty hour week in all employments for all minors under twenty-one. It could not be enacted, however, until the age had been reduced to fourteen and the scope of employments to manufacturing. Further, it substituted an "average" of ten hours a day for a flat ten hour limit and excepted fruit canning establishments.⁴⁷ This was a retreat from the position declared in the defunct existing law, in which the age limit for hours was sixteen years. The agitators could not let it rest there. The inspector himself recommended raising the age to eighteen.⁴⁸ Besides, the inspector found that the requirement of only an average of ten hours a day offered a loophole for the evasion of the sixty hour a week limit. Accordingly, in his report for 1884, he recommended a change in the law.⁴⁹ Governor Abbett, in his next message, supported the suggestion.⁵⁰ When the general factory act of 1885 was brought forward, it was again sought to raise the age to twenty-one and to include all employments. The legislature conceded the contention as to employments, but as to the age, it only returned that to sixteen. But it also restored the flat limit of ten hours a day or sixty a week.⁵¹ This set a standard abreast of that of the day. But the force of the measure was weakened by the provision that it was "willful" violation that would incur the penalties.⁵² The difficulty of proving a violation to be "willful" was one of the

⁴⁷ Secs. 3 and 4.

⁴⁸ *Rept. Insp. Fact.*, 1883, p. 11.

⁴⁹ *Ibid.*, 1884, p. 23.

⁵⁰ *Message Gov. Abbett*, 1885, p. 28.

⁵¹ Sec. 7.

⁵² Sec. 15.

reasons assigned by the inspector for difficulty encountered in enforcing the act. In his next report the inspector recommended that the word "willful" be stricken out.⁵³ Another difficulty was the unwillingness of children to testify against their employer.⁵⁴

It thus appears that the ideal set up from the beginning by the advocates of a restriction on the hours for children was a ten hour day for all minors under twenty-one. The most recognition they could get, however, was a limitation at first for children under fourteen in 1883, and then for children under sixteen in 1885. Neither law made any restriction on night work for children above the legal age for employment at all. And it does not appear that this was asked.

Efforts to Increase the Restrictions on Hours.—The perseverance of organized labor of this period in its agitation for legislation desired by it is in no way better shown than in its continued urging of a ten hour limit for all minors under twenty-one and for women. The general factory act of 1885 as passed omitted several provisions in the original bill and changed some others. To restore these omissions and alterations, a supplementary bill was introduced into the legislature of 1886. This bill contained a section prohibiting the employment of minors or women in any "manufacturing, mercantile, or mechanical" establishment for more than ten hours a day or sixty hours a week.⁵⁵ The whole bill, however, failed to pass. Undiscouraged, the Federation of Trades and Labor Unions introduced into the next legislature a similar supplementary bill containing the same provision on the hours for minors and women.⁵⁶ The

⁵³ *Rept. Insp. Fact.*, 1885, p. 48.

⁵⁴ *Ibid.*, p. 28.

⁵⁵ House Bill 218, 1886, sec. 8.

⁵⁶ House Bill 85, 1887, sec. 7.

bill was passed after much amendment, but this section was stricken from the measure on enactment. The following year another supplementary bill was brought forward to supply those features still rejected, including the ten hour day for all minors and women. This time, however, it was to apply only to manufacturing and mechanical employments.⁵⁸ Again it was defeated. Every year thereafter until 1892 almost identically the same bill was introduced and as regularly defeated, although always, excepting in 1891, passing the House.⁵⁹

The Fifty-Five Hour Law of 1892.—This agitation met success in 1892, when a most drastic law was passed regulating hours of employment. The preceding year a bill was introduced establishing fifty-five hours as a week's work, and fixing the hours for work during each day between seven A. M. and twelve M. in the forenoon and one P. M. and six P. M. in the afternoon, except on Saturday, when work was to cease at noon. This would appear to apply to adult men, though nothing in the bill specifically said so. It did declare that no minor under eighteen and no woman above that age should be employed except during the hours stated.⁶⁰ The bill passed the House with only one negative vote,⁶¹ but was never reported from the Senate committee to which it was referred. In 1892 the same measure was introduced again,⁶² and passed both branches of the legislature without a single vote recorded against it,⁶³ though in

⁵⁸ House Bill 93, 1888, sec. 2.

⁵⁹ House Bill 79, 1889; 119, 1890; 82, 1891.

⁶⁰ House Bill 40, 1891.

⁶¹ The vote was 37 ayes to 1 nay in a body of 60 members. *Min. House of Assem.*, 1891, p. 702.

⁶² House Bill 50, 1892.

⁶³ The vote in the House was ayes, 44; nays, none, in a body of 60 members; in the Senate, ayes 15, nays, none in a body of 20 members. *Min. House of Assem.*, p. 184; *Senate Journal*, p. 475.

the course of its journey it was greatly weakened and its constitutionality was endangered. Fruit canning establishments and glass factories were excepted from its operation. The provisions designed to secure its enforcement were emasculated. The requirement of tri-monthly visits by the inspectors was stricken out altogether. The "two weeks" limit was stricken from the requirement that the inspector investigate reported violations within two weeks, so that no time limit at all was put upon him, and the mandate that he "shall" prosecute violators was changed to the authorization that he "may" do so. In this form it became the act of March 23, 1892.⁶⁴

This act was widely heralded and won for New Jersey a famous position with respect to this feature of labor legislation.⁶⁵ It established a ten hour day and a fifty-five hour week and no night work for all minors under eighteen years and for all women over that age. Possibly it meant to do that for all men also, though the language on that is not above debate. And this it did, in fixing the hours of the working day, in terms that did not admit of any subterfuge. Yet it is open to serious criticism, partly as to its implied policy and its administrative qualities, but especially as to constitutionality. It is doubtful if those who had withstood the agitation for so many years would have conceded so much as to policy unless they had felt sure that the law was constitutionally and administratively impotent. These criticisms bear chiefly on its application to adult men and women. Yet the consequent weakness of the law was equally fatal to its influence upon the hours for minors. An attempt to test the constitutional strength

⁶⁴ *Pub. Laws*, 1892, pp. 171-2.

⁶⁵ See *N. J. Rev. Char. and Cor.*, I, p. 134.

of the act was made at once in two cases which were carried through to the highest court of the state. After two years of litigation, the court decided the cases on grounds of errors in procedure and left the constitutional question unsettled.⁶⁶ In the meanwhile the chief factory inspector had become convinced that there were some industries in which the act could be observed, if at all, only with unjustifiable losses. Also his term expired before the litigation was decided, although he held office until 1896 because a Democratic governor and a Republican senate could not agree on his successor. Under these circumstances, he appears to have given up the attempt to secure a ruling on the law or to enforce it except by moral pressure. His successor, when appointed, was a politician who lacked sufficient interest in the measure to push it, even though it had been a perfect law. For the rest of this period this statute remained intact on the books but measurably discredited in the public view. The uncertainty whether the act of 1885 was actually replaced by this one or not left the state's policy toward the hours of employment for children undefined and hazy, until the law of 1904, with which the next period is concerned. The unsuccessful bill of 1899, already twice noted, had a section that would have cleared the matter. It provided for an eight hour day and a forty-eight hour week for all children under sixteen years, while they were fulfilling the required attendance of twelve weeks at school. At other times the hours were limited to ten a day and sixty a week.

Health and Safety of Children.—Legislation in behalf of the health and safety of factory workers in general operates in the interest of children as well as adults.

⁶⁶ See *Rept. Insp. Fact.*, 1893, pp. 93-133b. The cases were not reported in the regular volume of law reports.

But a special interest in the ungrown child has led to some special provisions for his protection. It is these which are noted in this section.

Neither the early child labor bills nor the acts of 1883 and 1884 contained any restriction on the employment of children at dangerous or unhealthful work. In his report for 1883, the factory inspector marked this omission and urged that this, with other matters, be remedied by the legislature.⁶⁷ His next report also took note of the matter with some earnestness.⁶⁸ The subject was given attention in the bill enacted in 1885, which forbade that any woman or minor under eighteen years "be required" to clean machinery while it was in motion.⁶⁹ But the legislature rejected a provision forbidding that any minor be employed at "any work dangerous to health without the knowledge of the factory inspector and a certificate of fitness from a reputable physician."⁷⁰ The inspector thought the provision for safety now made would be ineffective because few would risk their employment by testifying that they had been "required" to clean moving machinery. He recommended that the law specifically prohibit them from doing so.⁷¹ This was done in 1887 and at the same time protection from unhealthful occupations was attempted. The law then declared that "no minor or woman" shall clean moving machinery and "no minor below the age of sixteen shall be employed at any work dangerous to

⁶⁷ *Rept. Insp. Fact.*, 1883, p. 11.

⁶⁸ *Ibid.*, 1884, p. 15. "The work at which some of these children are engaged is in many cases dangerous to life and limb and suited only for persons of mature years. This is proven by countless mutilated hands and by numerous accidents."

⁶⁹ *Pub. Laws*, 1885, pp. 212-15, sec. 4.

⁷⁰ House Bill 154, 1885, sec. 15.

⁷¹ *Rept. Insp. Fact.*, 1885, p. 30.

health without a certificate of fitness from a reputable physician."⁷² This continued to be the law throughout this period. But notice should be made of a bill in the Senate in 1897 proposing to substitute the word "injurious" for "dangerous" and to remove the exception allowed under a physician's certificate.⁷³ The bill never came to a vote, however.

A bill of 1888⁷⁴ required employers, before employing any minor under eighteen years of age, to instruct and inform him "in the nature and character" of the machinery "in and about which" he was to be employed. This passed the House, but was reported adversely in the Senate, which thereupon laid it aside. The effect of this would have been merely to give statutory form to the common law as already laid down by the courts of the state.⁷⁵ But that would have been a gain.

An act of 1889, providing for fire escapes and other protection from fire, contained a clause forbidding that women or "children" be employed in any establishment, manufacturing or mercantile, "in a room above the second story from which room there is only one way of egress."⁷⁶ The act was indefinite as to the age within which a minor would be considered a child within the meaning of the law.

The special provisions during this period for protecting the health and safety of children thus appear very incomplete. The only definite feature of the law was that on cleaning moving machinery. Many other dangerous operations were left out of consideration and the

⁷² *Pub. Laws*, 1887, pp. 243-6, secs. 3 and 7.

⁷³ Senate Bill 200, 1897.

⁷⁴ House Bill 255, 1888.

⁷⁵ For a statement of the common law, see *Smith vs. Irwin*, N. J. Law Reports (22 Vroom) pp. 508-9.

⁷⁶ *Pub. Laws*, 1889, pp. 446-51, sec. 1.

prohibition of employment at work dangerous to health was too indefinite, too susceptible to undecided controversy in application to be of any force. Whatever virtue it might have had was further weakened by the exception allowed under physician's certificate.

Compulsory Attendance: Law of 1885.—The practical operation of laws restricting the employment of children is affected so closely by efforts, or the absence of them, to compel the attendance at school of the children who are forbidden to work, that a discussion of a child labor policy must include the attitude toward compulsory attendance. The efforts to enforce the child labor law of 1883 directed attention at once to the need of supplementary legislation requiring the children excluded from employment to improve their time in school.⁷⁷ A bill was introduced into the Senate in 1884 providing for the compulsory attendance of all children between the ages of seven and twelve years for at least twenty weeks each year.⁷⁸ But the urging of the measure was checked by the fear of moving too rapidly,⁷⁹ and it was

⁷⁷ The inspector of factories, in his first report, recorded that the sentiment for such law was "universal", and recommended it in his report. (*Report*, 1883, pp. 5, 10.) The superintendent of schools at Paterson wished for such a law. (*Rept. Supt. Pub. Instr.*, 1883, App., p. 35.) The incoming governor gave a blanket recognition to this and other recommendations of the inspector and urged them upon the legislature for its "serious consideration." *Inaug. Address Gov. Abbett*, 1884, p. 18.

⁷⁸ Senate Bill 88.

⁷⁹ It was ordered printed before reference to a committee and left open for a while to allow thorough consideration. *Newark Daily Advertiser*, Jan. 29, 1884.

In an editorial dealing with some matters before the legislature, the *Newark Daily Advertiser* said, "It is a very important and well-intended measure, but the details should be thoroughly understood and wisely formulated before it is passed. It virtually transfers the control of children from their parents to the school boards, and unless it gives the former the right to educate their children in

withdrawn four weeks later because it was thought best, on account of the lack of school accommodations, to leave the consideration of the problem to the next legislature.⁸⁰

Meanwhile, the friends of the proposal did not cease to urge it.⁸¹ In 1885 the bill of 1884 was again introduced into the Senate with a few additional details, and passed without amendment and with hardly any opposition or discussion.⁸² It required every child between seven and twelve years old to attend a day school for at least twenty weeks each year, at least eight of the twenty to be consecutive.⁸³ It also required, as noted in another connection, that every working child under fifteen years of age, employed "in any business whatever", should attend some recognized day or night school for at least twelve consecutive weeks within every twelve months. Two weeks at a recognized half-time or evening school was to be counted as one week in day school. This attendance was to be evidenced by a certificate from the teacher, without which the child might not be em-

schools of their own choosing, the bill will be open to objections that may defeat the object intended on constitutional grounds." Jan. 30, 1884.

⁸⁰ *Rept. Insp. Fact.* 1885, p. 6. Superintendent of schools for Paterson, in *Rept. Supt. Pub. Instr.*, 1884, Appendix, p. 30.

⁸¹ The inspector again urged it in his report (1884, p. 31) and the Governor called "special attention" to that feature of it. *Message Gov. Abbett*, 1885, p. 28.

⁸² Act April 20, 1885, *Pub. Laws*, pp. 280-4. The newspapers hardly noted the progress through the legislature.

⁸³ The constitutional objection to such requirement was met by excepting the case of any child which was excused by the school board of the district on the ground of its "bodily or mental condition," or because it was "taught in a private school or at home by some qualified person or persons in such branches as are usually taught in primary schools."

ployed. When no efficient school existed within two miles from the child's place of employment or his home, the law accepted attendance at a school temporarily approved by the factory inspector. This admitted the employers' evening schools maintained in some places. Parents who failed to send their children to school as provided were subject to a small fine or short imprisonment. For the enforcement of the law, the factory inspector or the school authorities were empowered to secure a detail from the police force of cities to be known and serve as truant officers. In the absence of a regular police force, the local school board was required to designate one or more constables or, where none resided in the district, some other person. It was made the duty of the truant officer to cause or bring prosecution against any person violating the act. An attempt was made to meet the problem of persistent truants and incorrigibles by providing that all such children between seven and fifteen years of age should be deemed "juvenile disorderly persons" who, if over nine years old, might be sentenced to a juvenile reformatory until sixteen years old, unless sooner discharged. But the sentence might be suspended during regular attendance at school. The problem of providing accommodations, which delayed the act one year, seems not to have been solved, for by a proviso the law was not to apply to those communities where the accommodations were inadequate. Since that was the chronic condition, especially in the larger towns and cities, the proviso practically defeated the object of the bill in the very places where it was most needed.

Defects of the Attendance Law.—This law was not effective. Just what effect it had will be discussed at a later point. But here it is desired to note the respects in

which the law itself failed to meet the exigencies which are bound to arise in any attempt to carry out the policy adopted. In the first place the shortness of the term of required attendance, whatever may be said of it as a matter of policy, was an administrative weakness. It is a comparatively simple matter to note whether a child is attending school or not. But to note for each child whether he has attended for eight consecutive weeks and whether he has attended more than that, either regularly or intermittently, sufficient to aggregate twenty weeks in all each year would require an amount of bookkeeping that would tend to dissuade school officials from trying to keep up with it. But such records would be necessary to know whether children enrolled were fulfilling the required attendance.

More serious than this was the inadequate provision for getting children on the rolls in the first place, as well as keeping them there. That could be done only through truant or attendance officers. It was soon discovered that, in providing for these, the act failed to authorize their payment except in cities.⁸⁴ Also, truant officers were not empowered to enter places of employment in search of children illegally out of school. This omission was especially fatal to the enforcement of the attendance for twelve weeks required of all working children under fifteen years of age. As the factory inspectors had authority to enter only manufacturing establishments, there was no person with sufficient powers to discover whether such children employed elsewhere than in factories were complying with the law. Further, as to truant officers, they had to be selected from the regular police force or the constables if there were

⁸⁴ *Messages Gov. Abbett*, 1887, p. 14; 1891, p. 29; *Rept. Supt. Pub. Instr.*, 1891, p. 21, complain of this.

such. But the average policeman looks upon truancy service with disdain and the heads of the force regard it as an irrelevant duty to be discharged with as little attention as possible. The administration of the truancy work through these channels and under these conditions, therefore, could not but be ineffectively done.

Another weakness in the provision for enforcement was that the administration of the law was left to local school boards without any penalties or other provision for constraining them to secure its observance. Although this weakness was inevitable, since no scheme of centralized administration with authority over localities would have been possible of enactment, nevertheless it has to be noted. For the want of such constraint, local boards yielded in their efforts at enforcement before various deterrent consideration. One immediate obstacle was the expense of providing for truant officers and of conducting prosecutions.⁸⁵ Another consideration was the impairment of classroom work and discipline.⁸⁶ This has been shown in connection with the requirement of school attendance as a condition of employment. The only remedy for this was to provide ungraded rooms and parental schools with special teachers and equipment for backward, irregular, and incorrigible children. But this involved additional expense, which was prohibitive except for the larger places, and a special problem to worry the school authorities. The easier way was to let the law go by the board. Finally, there was the perpetual lack of school accommodations. Later it will appear how important this actually was. But here let it be noted that the law made no provision for insuring build-

⁸⁵ *Rept. Insp. Fact.*, 1886, p. 17, complains of this.

⁸⁶ *Ibid.*, 1886, p. 17; 1887, p. 9; Supt. of Passaic, in *Rept. Supt. Pub. Instr.*, 1896, p. 203, complain of this.

ings into which the children out of school might be placed if compelled to attend.

Efforts to Strengthen the Attendance Law.—The need of remedies for the deficiencies of the law was soon noted by the advocates of compulsory attendance. Many urged merely a more vigorous law, but some advocated it through constraint upon the localities.⁸⁷ Attention was given to specific needs also, as for truancy or parental schools⁸⁸ and for accommodations.⁸⁹ The only defect, however, which received the attention of the legislature was the want of provision for insuring sufficient accommodations. This provoked a great deal of discussion. As soon as the act of 1885 went into effect, there arose at once a demand for constraint upon local school boards.⁹⁰ But a mandate by the state would not alone be sufficient. The inactivity of localities was not due solely to indifference or to refusal to incur the expense. There were many cases where funds could

⁸⁷The Superintendent of Public Instruction at once took a pronounced stand for that course. In his report for 1885 he says that if, through negligence of municipalities, the present law fails "to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children of the state of school age, it is surely the constitutional duty of the legislature to enact a law which cannot fail." (P. 33.) The superintendent of schools for Newark complained of the law's weakness in this respect. (*Rept. Supt. Pub. Instr.*, 1886, App., pp. 101-2.) Governor Green in his message of 1890 urged the need of better enforcement. (*Message*, p. 27.) Likewise the superintendent of Paterson in 1899, (*Rept. Supt. Pub. Instr.*, 1899, p. 291) and the State Charities Aid Association in 1900 (*Annual Report*, p. 12).

⁸⁸*Rept. Insp. Fact.*, 1885, p. 36; 1886, p. 17; *Rept. Supt. Pub. Instr.*, 1896, p. 203.

⁸⁹The Inspector of Factories even urged that the state provide the needed accommodations. *Repts.* 1884, p. 31; 1885, p. 49.

⁹⁰*Repts. Insp. Fact.*, 1886, p. 16; 1887, p. 9; 1889, p. 6; and Governor Abbett, in his message of 1887, p. 15, urged that the state school officials be given power to apply to the courts for a mandamus to compel neglectful localities to provide needed accommodations.

not be raised because the limit of taxation or of indebtedness had been reached. An attempt at compulsion which did not provide for these cases would have placed such communities between the devil and the deep sea. Accordingly practical discussion turned toward this problem. Before the law had been in operation two years, a definite proposal was made. Since 1872 school districts had been permitted to borrow from the state school fund for building purposes on school district bonds. But, by the framing of this law, cities found themselves shut out from this privilege.⁹¹ Governor Abbett recommended in 1887 that provision be made whereby municipalities could borrow at a low rate of interest from this fund, of which some over \$2,000,000 could be invested in this way. He urged also that all restrictions by their charters or by public law on their indebtedness be waived so far as to permit cities to provide needed buildings in this way.⁹² The suggestion was followed. But carelessness in drafting the law delayed its enactment in passable form until 1889.⁹³

⁹¹ *Pub. Laws*, 1872, pp. 91-92. This authorized the investment of the state school funds in the building bonds of school districts and municipalities under prescribed safeguards. It then authorized the inhabitants of any school district, when met in a town meeting for the consideration of school finances, by a two-thirds vote of those present, to provide for the issue of bonds of the district in such sums and in such amounts and payable at such times as they might direct. Interest was fixed at 7 per cent and the bonds were made a lien upon the property of the district. There would seem to be no limit to the construction of school buildings by those who wished them except the amount of school funds to be invested in this way. Rural districts largely availed themselves of this opportunity. But in the case of cities, besides the impracticability of gathering the voters in "town meeting", there was the further obstacle that cities were integral districts in themselves and hence were restrained by their debt limits as municipalities from borrowing as districts.

⁹² *Message Gov. Abbett*, 1887, pp. 14-15.

⁹³ *Pub. Laws*, 1889, pp. 353-5. The act was passed in 1887, but in

Summary.—The legislation just reviewed shows the beginning of a persistent and studied policy. In that it stands in marked contrast with the preceding years. Yet the sentiment of the state was limited in the extent of its support and was ignorant of the technique of a child labor policy. It did not see at how many different points such a policy comes into opposition to established practices, not only economic but social. Consequently, it did not make the numerous administrative provisions, each requiring due regard for the others, needed to meet these reacting influences. This knowledge was doubtless had by some in a much larger measure. But the perception of the various points at which opposition or evasion would be encountered and the perception, especially, of the administrative importance of providing for those occasions had yet to be hammered out by experience for the most of those who were shaping the policy from the side of its advocates. It is not implied that the opponents of the policy had any more thorough understanding of the matter. They did not need it. They each knew just how the provisions of the proposed law would affect their interests and were able to turn aside the force of the law at that point. The advocates of the policy were not always sufficiently sensitive to the fundamental consequences of such modifications of the law; so that, when the measure was tried out in such a form as to make it doubtful whether it applied to a district coextensive with a city and independent of a township. Governor Green, who followed Governor Abbett, therefore vetoed it and brought the matter to the attention of the next legislature. (*Message Gov. Green, 1888, p. 13.*) The correction was made and the act passed and signed. (*Pub. Laws, 1888, pp. 288-90.*) This time it was so uncertain as to the security of the bonds issued under it as to jeopardize their sale. Governor Green called this point to the attention of the legislature in his message of 1889. (P. 19.) It was then passed in final form.

operation, the aggregate of such modifications was found to have left important loopholes. The defects of the policy are thus not to be charged to the farseeing and comprehensive counter campaign of those who opposed it, although here too there were doubtless some who were shrewd enough to see with satisfaction the consequences of the pruning of the bills.

Hence the character of the legal definition of the standard that has just been shown. The attempt to maintain an age limit was frustrated by imperfect provision for determining the true age of a child and by practically exempting the employer from responsibility for children under age found in his establishment, without locating the responsibility upon any other really responsible person. The educational minimum fell far short of the standard set because of various administrative contingencies unprovided for. The minimum physical standard was of no real force because the determination, according to the law, of a child's physical state easily fell into the hands of those with an indirect interest in having the child go to work anyway. The standard of hours for children became fatally uncertain. The exclusion from dangerous duties and occupations was so indefinitely ordered that only the most clearly dangerous cases would come with certainty under its application, without endless discussion of questions of opinion with no available resort to settle them. The compulsory attendance law was without adequate administrative force in many respects. And finally, as will be shown,⁹⁴ the public sentiment itself did not insist on an execution of the policy it had decreed.

When put into a consecutive statement, these shortcomings fill the view of the standard during the period.

⁹⁴ See below, chapter X.

But they should not be allowed to obscure the fact that the policy, even thus poorly defined, did have considerable force while in the hands of a sympathetic and willing department for enforcing it, and that success to an important degree was realized. Eventually the people of the state became aroused over the lack of complete success. The nature of the shortcomings in the law were learned through the experience within the state and elsewhere. And a new endeavor was made to define more effectively the standard of the policy. That is the subject of the next chapter.

CHAPTER V.

A GENERAL AND INFORMED PUBLIC SENTIMENT. SINCE 1904.

The Widening Interest in Child Labor.—Up to the opening of the present century, so far as the writer has been able to discover, the labor organizations offered the only organized effort for adopting and executing a state policy toward employed children. Soon after 1900, however, the agitation began to receive support from other sources. In 1901 the New Jersey Consumers' League was organized and, as part of its work, began the discussion of the child labor situation in New Jersey.¹ Child labor began to appear as a topic on the all-embracing program of the women's clubs. Charitable organizations also became infected. And the newspapers began to report discussions and publish complaints of violations of the law and of neglect of duty by inspectors and to urge reform.² Much that was said from

¹It was under the auspices of this organization that the earliest attempts were made to bring into coöperation the various elements of the agitation.

²Special criticism was directed to the glass industry in the southern part of the state, the silk and other textiles of Passaic county, and the tobacco and cigar factories throughout the state. Examples of this are too numerous to cite. They will be found in all of the leading newspapers.

Two distressing events happening within a few months of each other had a great deal to do with increasing the interest of the state in the matter. In June 1901, Lawrence Cianchetta, after working all day and then through the night shift in a glass factory, was overcome with exhaustion on his way home along a railroad and fell

this time on was hastily concluded from insufficient and ill-considered observation. And much was even framed up for the purpose of sensation. So that a great deal of injustice, as well as truthful criticism, was brought upon some establishments in the state. But whether based, as in some cases, on deliberate sifting of the available facts, or, as in other cases, on hysteria, the swelling wave of sentiment adverse to the employment of children is the thing to be noted here. That was indisputable. And out of it came the events to be examined in this period.

Agitation for Better Inspection.—The public resolution now forming directed itself first to an improvement in the inspection service. It will be necessary, therefore, to turn aside here and follow that agitation in order to trace the public mind in its approach to a new ideal or standard. The labor organizations had asleep on the track, where he was killed by a train which passed later. It developed at the inquest that he was but nine years old. The coroner's jury censured the glass company for employing one so young in violation of the law. (*Camden Post-Telegram*, June 15, 1901.) This was made the text for several editorials, also. The pathetic tragedy of such a little fellow losing his life as the result of exhaustion from toil gripped the sentiment of the state so as to strengthen greatly the militant opposition to child employment. The accident was often mentioned as the agitation grew.

Five months later almost to a day, in the same factory, James Mousto, while fighting with another boy, was thrown so as to injure his head. He was removed to an adjoining room where he died soon after the injury. At the inquest it was shown that this boy was only between ten and eleven years old. These proven cases of boys well under the age limit were proclaimed to be typical of conditions generally. The known negligence of the local inspector made it easy to believe that they were. The Union Trades Council of Millville, composed of some seventeen different unions, censured the chief inspector and the deputy; and a committee was appointed to arrange for a meeting of representatives of labor organizations from all parts of South Jersey to protest against the lax administration of the law. *Camden Post-Telegram*, November 14, 1901.

long agitated, though with no success and little attention, for a more specific and exacting legal requirement of duty from the inspectors. At length in 1902, under the added pressure of the growing sentiment, an act was passed requiring the inspectors to give their full time to their work.³ Governor Murphy, who began his term that year, was in sympathy with the purpose if not with all of the methods of the agitation. He let it be known that he would hold the inspectors to this requirement. This brought improvement in some places at once.⁴ The labor unions in some localities appointed committees to watch the work of the inspectors.⁵ Numerous local organizations of a charitable and philanthropic character pursued the same policy. Although many complaints from these sources were without sufficient foundation and although many of them were not investigated, nevertheless this constant surveillance of the inspectors was an increasing stimulation to better service.

The efforts to reform the inspection were directed higher up also. The term of office of Chief Inspector Ward expired in 1901. Pursuant to a resolution of the annual convention in 1900,⁶ the Federation of Trades and Labor Unions preferred charges against Inspector Ward and urged Governor Voorhees not to reappoint him. The Federation presented to the Governor a great number of affidavits alleging specific violations. But the Governor could not see his way to refuse reappointment to Mr. Ward.⁷ When Governor Murphy had

³ These events are discussed below, p. 138.

⁴ Hugh F. Fox in *Annals of Amer. Acad.*, XX, 196.

⁵ This was pursuant to action taken by the Federation of Trades and Labor Unions at its convention in August 1902. (See *Proceedings*.) Yet some locals had been doing this for some time.

⁶ *Proceedings*, 1900, p. 40.

⁷ The *Newark Sunday News* said this was due to "the exigencies

entered upon his term, charges were again preferred against Inspector Ward and his removal was demanded. This time the labor unions were supplemented by other organizations such as the Consumers' League and the State Charities Aid Association.⁸ Governor Murphy, in a number of interviews with the inspector, urged upon him the "importance of prompt and vigorous action in case of infringement of the law."⁹ On one of these occasions, April 22, 1902, the Governor censured him for neglect.¹⁰ In August of the same year, the Federation of Trades and Labor Unions asked Mr. Ward to come before its convention and defend his course against charges there made against him in person.¹¹

To all criticism Inspector Ward pleaded that he was thwarted by the falsified affidavits which could not be disproved. But even the most charitable of his critics, though admitting this point, still believed that he lacked aggressiveness and other qualities necessary to one in his office. Thus arose a demand for his removal. The Federation of Trades and Labor Unions sent a committee to Governor Murphy with that request.¹² The Governor received the committee, but had to tell them that, according to advice from the attorney-general, he had no power to remove the inspector, whose appointment was made with the consent of the Senate and whose removal, therefore, could be only by impeachment.¹³ Counsel for the
of the political situation." January 3, 1904, in leading editorial at time of Ward's resignation.

⁸ Hugh F. Fox in *Annals Amer. Acad.*, XXV.

⁹ *Message Gov. Murphy*, 1903, p. 9.

¹⁰ *Newark Evening News*, Apr. 23, 1902.

¹¹ *Proceedings*, 1902, p. 37. *Newark Evening News*, Aug. 19, 1902.

¹² *Proceedings*, 1902, p. 35. The committee could not find the Governor at the time, but was continued until it could. This it did on September 16, as noted below.

¹³ *Daily State Gazette*, Sept. 17, 1902.

Federation concurred in the position of the Governor. The committee then considered that avenue as closed, because of the improbability of getting a verdict from the Senate.¹⁴

It was then proposed to amend the law so as to give the Governor power to remove the inspector. In this agitation the other forces joined with the labor organizations. Governor Murphy urged the proposal in his next message.¹⁵ The outcome was an act giving the Governor this power,¹⁶ though it was not secured without opposition that threatened to defeat the measure.¹⁷

When the Governor had the power of removal in his hands, however, he was slow to use it unjustly.¹⁸ The heat of the accusations and denials distorted any view of the facts with reference to a course of strict justice.

¹⁴ The legislative committee of the Federation did, however, submit to the candidates for the Assembly the question of the action to be taken concerning the inspection.

¹⁵ *Message Gov. Murphy*, 1903, p. 9.

¹⁶ *Pub. Laws*, 1903, pp. 102-103. By this the appointment of the inspector was put in the hands of the Governor alone, who was given power to suspend or discharge him at his discretion, after giving him an opportunity to make a defense.

¹⁷ *Proceedings Conv. Fed. T. and L. Unions*, 1903 (not paged).

¹⁸ Many who were active in urging that this power be given to the Governor were surprised that he did not use it by removing Mr. Ward forthwith. It was thought that political influence was intimidating the Governor. While he doubtless could not disregard such influences, an independence and resolution later shown does not permit the easy acceptance of this view. Besides, it was reported that Mr. Ward tendered his resignation, which the Governor returned saying that he had no desire to remove him; all he wanted was that he make the office efficient and get the results the position was created to achieve. (For this see *Newark Evening News*, Jan. 2, 1904.) The facts fit better the interpretation which was afterward commonly given, that he wished to give Mr. Ward every opportunity to retrieve himself; that he hoped that this sword of Damocles would impel him to do better; and that meanwhile the Governor could make sure of his ground.

To what degree the law was violated and how far these violations were due to the unenforceability of the law as well as the lax efforts to administer it, were questions which, when asked in an unpartisan spirit, did not find their answers lying at hand. On the one hand were the accusations by the critics, charges which were often indefinite or without sufficient support to sustain a challenge of their accuracy. On the other hand were the unqualified denials of the inspectors. In this uncertainty Governor Murphy, soon after the legislature adjourned, without removing Mr. Ward, put his own private secretary, Mr. John L. Swayze, in active charge of the department to try out the situation. Mr. Swayze began in May the investigation of child labor which issued in the disclosures noted in the discussion of the observance of the law.¹⁹ While this investigation was in progress a more vigorous enforcement of the law was undertaken also, especially after September 1, when there went into effect the act of 1903 raising the age limit for boys to fourteen, where it had been for girls from the beginning.²⁰

The discussion about this time was considerably enlivened by the advance publication late in December of the first part of the report on child labor by the Bureau of Statistics already mentioned. The heated controversy

¹⁹ See below, pp. 181 *et seq.*

²⁰ On September 22 an all day's conference was held by Messrs. Ward and Swayze with the deputies. The report of this conference states that by that date between 150 and 200 children had been discharged from the factories, while the department believed that many more had been laid off without notification. (*Newark Evening News*, Sept. 23, 1903.) The report of the inspector for the year ending October 31,—a report which was prepared by Mr. Swayze and Mr. Dale, the chief clerk of the department, although signed by Mr. Ward,—says that 327 children had been discharged since Sept. 1, to which as many more should be added who were discharged by the employers themselves or by truant officers or who were taken out by their parents. *Rept. Insp. Fact.*, 1903, p. 4.

over this report²¹ does not require further attention than to note it as an event in the discussion over the agitation for a more vigorous policy. The data of the report are noted in their appropriate places.

On January 2, 1904, Mr. Ward resigned.²² It was expected that Mr. Swayze would succeed him,—and the Governor would have appointed him,—but he was unwilling to accept the position at the salary attached. On January 8 Governor Murphy appointed Mr. Lewis T. Bryant, of Atlantic City, whose record, though pertaining in no way to factory affairs, promised well and whose administration of the office has been of a high character, though it has not escaped criticism.

Agitation for a Better Law.—Although the awakened

²¹ This first part used the returns of the twelfth census for manufactures and, by comparison with the same returns for other states, concluded that the amount of child employment in New Jersey was not as deplorable as it was depicted. This conclusion was elaborated in the full report, published later, of the Bureau's own investigation of factory children. Besides this conclusion, the report argued for a much wider exemption of children employed because of family hardship. It made out that this was the chief reason why children went to work and urged the necessity of permitting children under the minimum age to take employment in those cases. The apparent tone of the advocate that sounded throughout the report struck a rasping discord with the agitation against child labor. It was attacked most venomously as a specious plea for child labor calculated to offset the agitation, as an indefensible attack on the department of inspection and especially on those then in charge of it, as a reflection on the legislature for passing the act of 1903. The chief of the bureau replied in a letter to Governor Murphy. See, *e. g.*, *Passaic News*, quoted in *Newark Evening News*, Dec. 28, 1903; *Newark Evening News*, Dec. 26, 28, 29, 30, 31, 1903; Jan. 5, 28, Feb. 3, 1904; *Paterson Daily Press*, Feb. 2, 1904; *Trade Union Advocate*, Jan. 1, 1904. Similar statements of the controversy are found in other newspapers.

²² The news reports and editorial notices commented upon it with evident gratification. It was stated that the resignation was asked for. See *Newark Evening News*, Jan. 2, 1904; *Newark Daily Advertiser*, Jan. 2, 1904.

public interest turned its attention first to strengthening the administration of the law, it soon began to agitate for a stronger law to administer. The imperfections of the existing law were more apparent now that it was more widely studied. Criticism was aimed especially at the reliance upon affidavits alone for evidence of a child's age. Inspector Ward had used this for his breast-works so often that his critics could not help but take note of what strength there was in the defense.²³ Hardly less emphasized was the demand for raising the age limit for boys from twelve to fourteen, where it was for girls. And Governor Murphy urged this upon the legislature.²⁴

Three bills were introduced into the legislature of 1903,²⁵ of which one²⁶ was the best administrative measure. The content of this bill deserves notice as an index of the more informed attention to the administrative needs of the state's policy; and the legislative career of it is illustrative of the wider and more determined public interest in the matter. The bill established a uniform age limit of fourteen years. Children between that age and sixteen were required, before they might be employed, to secure from the local school superintendent, or an authorized agent, either of whom was made the sole judge in the matter, a certificate of age, issued only upon "satisfactory evidence", and stating also the child's schooling. Those whose certificates did not show an "ability to read at sight, and write legibly, simple

²³ The administrative weakness of the law has been considered above, p. 37.

²⁴ *Message Gov. Murphy*, 1903, pp. 9-10. "Children cannot be expected to go to school after the practical work of life has begun, and their mental, moral, and physical welfare all demand that the change recommended be made."

²⁵ Senate Bill 177; House Bills 2 and 88.

²⁶ House Bill 88.

sentences in the English language," were required to attend night school. Employers of children between fourteen and sixteen years were required to keep those certificates on file and to present them for examination to the inspectors and truant officers. The employment of a child under sixteen without such a certificate was subjected to a penalty of \$50, and if continued after notice by the truant officer or inspector, to a further penalty of five to \$20 for each day. This general scheme, with a number of buttressing details, was the first proposal in the legislature of an administratively adequate check upon children whom it was desired to keep from employment. It took the burden of proving the age of a child from the inspector and placed it upon the parent. It gave the inspector a simple and definite criterion of the legality of the employment of a child, namely, the presence of a certificate of age on file with the employer. It required the parent's word as to the age of a child to be supplemented by some "evidence." It protected the employer from liability if imposed upon by a parent or child, in that the certificate brought by the child from the school official was by implication authority for the employment. Any doubt on this point, in case of a false certificate, was removed by the specific provision that an affidavit from the parent, made at the time of employment, was to be conclusive in any charge against an employer. Yet this did not in this case open a loophole, because the employer must have the certificate also, under risk of penalty calculated to make him careful to secure it. This could be done only after the child had submitted evidence of his age to the school officer who issued the certificate. The measure was imperfect, however, in its reliance upon the judgment of the authority issuing the certificates as to what should be accepted as "satisfactory

evidence", for individual feeling, indifference, and carelessness would be bound to lessen the accuracy of this judgment in many cases. An extension also of the state policy was proposed in a clause forbidding children under ten years old to sell newspapers on the street at any time, and those from ten to fourteen to sell them between seven o'clock in the evening and seven o'clock in the morning, or during school hours in the daytime. Yet even this bill failed to provide several features urged by the agitators. Especially to be noted was the failure to prohibit night work for children and their employment in mercantile occupations.

Both of the House bills were referred to the committee on revision of laws. After extended hearings the committee reported what it called a substitute for both bills, but which was in fact the measure just noted so amended as to provide an age limit of sixteen years for girls while retaining the fourteen year limit for boys.²⁷ The bill was debated at length and amended in some details, but finally passed the House.²⁸ It met determined opposition, however, in Senator Shinn, the chairman of the senate committee to which it was referred.²⁹ The

²⁷ Committee substitute for House Bills 2 and 88. This change was made at the instance of the Federation of Trades and Labor Unions through its legislative committee [*Proceedings Conv. Fed. T. and L. Unions*, 1903 (not paged)], in the face of strenuous opposition from the manufacturers, especially in glass and silk. (*Newark Evening News*, Feb. 11, 1903; *Trade Union Advocate*, Mar. 20, 1903.) The only other change was the introduction of a clause specifically repealing the requirement of sixteen weeks of schooling for children between twelve and fifteen.

²⁸ *Min. House of Assem.*, pp. 525-6.

²⁹ The power of the chairman is almost absolute. The fetish of senatorial courtesy is so devoutly worshipped in the New Jersey legislature that it has been the height of discourtesy to suggest that a committee be relieved of further consideration of a bill; and for the Senate actually to recall a measure against the wish of the

most he would concede was to raise the age limit for boys to fourteen years. Accordingly, a bill to that effect, and also abolishing the requirement of school attendance for employed children between the minimum age and fifteen years, was quickly put through both houses and became the act of 1903 already noted.³⁰

This sort of an anti-climax to the measure that passed the House was disappointing to the advocates of a stronger law. It was even questioned whether it would not have been better to have waited until the next year rather than accept the act that passed.³¹ Yet their agitation was hardly lost. It is probable that the discussion and passage by the House of the relatively advanced measure which it produced prepared the way for the still stronger bill of 1904. At any rate, events moved favorably for the enactment of that law.

The Bill of 1904.—The agitation leading up to the legislative attempt of 1903 was continued with cumulative intensity. The Federation of Trades and Labor Unions endeavored to arouse the local organizations to activity

committee chairman is unthinkable. Once in committee, a bill is at the mercy of the chairman, who knows no masters except the interests he represents and his party leaders. Thus has perished much proposed labor legislation, as well as other measures, without ever receiving the consideration of the legislators.

³⁰ See above, p. 37. The delay and opposition started a stream of petitions to the Senate lasting over a week urging the passage of the measure. *Senate Jour.*, pp. 417, 430, 455, 509, 528, 573.

³¹ *N. J. Rev. Char. and Cor.*, II, 85. One thing contributing to the failure to secure a more comprehensive law was certainly the lack of agreement among the advocates of such legislation. It was reported that at the committee hearing while the bill was before the House "a score of delegates, and representatives from labor unions, and several deputy inspectors" appeared. All agreed that some improvement should be made in the present laws, although they did not agree as to what the changes should be. *Newark Evening News*, Feb. 11, 1903.

while its executive committee carried on a campaign to secure favorable consideration for a measure in the legislature of 1904.³² The charitable and philanthropic societies became increasingly active.³³ The newspapers gave more space to reports and discussions and to editorial comment. Meanwhile, Mr. Swayze's experience as *de facto* head of the department of inspection, and the results of the investigation conducted under his direction, persuaded him that the child labor and inspection laws were administratively impotent, if not constitutionally weak.³⁴ At Governor Murphy's direction he began the preparation of a new law. But the possibility of getting a measure through the legislature was jeopardized by the lack of agreement, among those who were supporting the movement, as to the details of the law they wished enacted.³⁵ The prospects were that a number of bills would be introduced, representing the various ideals of the advocates,

³² Pursuant to action taken by the 1903 convention of the Federation of Trades and Labor Unions, considerable literature was sent out to stir up the local unions to activity in their respective neighborhoods. The officials took part in many conferences also with other bodies interested.

³³ See files of *N. J. Rev. Char. and Cor.*

³⁴ The attorney-general had expressed the opinion that the old law was unconstitutional and ineffective because of exceptions, in some cases, to the glass and fruit canning industries. *Testimony of Mr. Swayze before Senate committee hearing*, Mar. 9, 1904.

³⁵ The trade unions would have liked to stand out for a sixteen year age limit. But most of the other advocates thought that was too high, or at least, impossible. Then there was difference among the philanthropic societies over the question of including mercantile and street trades, of an educational test as well as an age limit, of prohibiting night work, and of some of the factory regulations especially pertaining to women. The differences were not so much as to the policy to be striven for in these matters as to the practicability of making a contest for them at the same time that it was sought to establish soundly the fundamental regulation of child labor.

and that, as in 1903, public opinion could not be sufficiently united upon any measure to get it through. Mr. Swayze, therefore, urged upon the various leaders that they make some concessions to each other and come to an agreement as to what they would ask from the legislature for the time being. Pursuant to this the Consumers' League issued a call³⁶ to a number of interested persons for a conference to be held in Newark early in December. The result of the action of this conference was the organization of the Children's Protective Alliance, which operated through a large committee representing the charitable and philanthropic societies, the labor organizations, and individuals interested in the purpose.³⁷ Besides its participation in this committee, the independent activity of the Federation of Trades and Labor Unions was enlisted by Mr. Swayze in support of the bill he was preparing.

In the preparation of the bill, the laws and experience of other states were studied. Manufacturers, labor leaders, philanthropists, and all persons interested were frequently consulted. The constitutional consideration also was kept continually in mind, and the advice of the attorney-general was sought in the framing of the measure. Every effort was made to bring all the interests into agreement, so far as possible, before the bill was introduced

³⁶ Circular letter dated Nov. 20, 1903.

³⁷ *Newark Evening News*, Dec. 5, 1903; *N. J. Rev. Char. and Cor.*, II, 236; III, 16. Mr. Hugh F. Fox, the chairman of the conference, was authorized to name the members of the committee, which was empowered to add to its own membership. This very independent and expansible committee was so designed purposely, according to Mr. Fox in an interview with the writer, so as to permit it to determine its course according to the exigencies of the moment without any restrictions whatever. A legislative committee of six of its members gave direct attention to the work of lobbying.

into the legislature and thereby forestall as much opposition as could be.

As the principal opposition was expected in the Senate, the bill was introduced there.³⁸ This was on February 8. Senator Shinn was the chairman of the committee to which it was referred. A month passed by before anything was heard of it again. Then on March 9 his committee gave a hearing on the measure.³⁹ At this hearing were present the labor leaders of the state, Mr. Swayze, who drew the bill, Mr. Hugh F. Fox, and many other men and women prominent in charitable and philanthropic enterprises. And even Governor Murphy found time to attend for a part of the hearing. To oppose the bill there were only a delegation of glass blowers,⁴⁰ who limited their opposition to the section which prohibited the employment of children below sixteen between six o'clock P. M. and six A. M. The glass blowers work in day and night shifts which alternate every week, and the numerous tending boys follow the same order. The law as proposed would cut out a large number of the boys from their usual turn on the night shift and necessitate the resort to more older boys to do that work. But there is always a scarcity of boys anyway, and this would be aggravated by the new law. Because of this and some other considerations, the glass manufacturers and some of the blowers were desperately opposed to this section in the bill. It is worth noting that there was no representative of the textile manufacturers of Passaic county at the hearing. This may have been because they had already sent a delegation to Governor Murphy. Their

³⁸ Senate Bill 86.

³⁹ See *Paterson Daily Press*, Mar. 10, 1904, for account of hearing. Also *Daily State Gazette*, same date.

⁴⁰ This was the attitude of some members, but not of the glass blowers' organization.

contention was chiefly against the limitation of hours for minors under sixteen to ten a day and fifty-five a week.⁴¹ Notwithstanding the strenuous opposition from the glass industry, the bill was reported without amendment on March 15. When the bill came up for consideration the next day, a number of petitions were presented against any amendment of the bill. Yet several changes were attempted and some were made,⁴² including the removal of the restriction on night work, which was fought for by the glass industry. The measure as amended passed the Senate March 22 by the unanimous vote of the eighteen senators present,⁴³ and was put through the House in two days, passing by a vote of fifty-five *ayes* to no *nays*.⁴⁴ With the signature of Governor Murphy it became the act of March 24, 1904.⁴⁵

⁴¹ *Paterson Guardian*, Feb. 1904. They also took exception to some of the administrative provisions, but accepted the principle of restricting child labor and did not question the age limit of fourteen.

⁴² For these proceedings, see *Senate Journal*, 1904, pp. 352-6.

⁴³ *Senate Journal*, p. 429.

⁴⁴ *Min. House of Assem.*, p. 728.

⁴⁵ *Pub. Laws*, 1904, pp. 152-170.

The fact that no opposition to the bill from employers in general appeared before the legislature does not indicate that the measure was framed and passed without any, but rather indicates how carefully that opposition had been met and forestalled, during the preparation of the bill, by conferences with the parties interested. Mr. Swayze informed the writer that he encountered bitter opposition from some manufacturers, who said the law would drive them out of business in competition with other states. But the overwhelming tide in opposition to child labor, that had risen throughout the state, probably showed them that some action was inevitable, and the consultations with them gave them an opportunity to influence the provisions of the bill as much as they could hope to. This pre-legislative opposition was not confined to employers, according to a retrospective editorial in the *Newark Evening News* at the time the law went into effect. "It was a hard struggle by which the new law was obtained. Factory owners in all parts of the state fought against it; parents who should have been engaged

Provisions of the Act of 1904.—By the provisions of the act, no child under fourteen shall be “employed, allowed, or permitted to work in any factory, workshop, mill, or place where the manufacture of goods of any kind is carried on.” Violation by employer or by parent or other custodian incurs a fine of fifty dollars.⁴⁶ To sift out children under the minimum age, the law prescribes certain documentary evidence of age.⁴⁷ Native born children are required to have an affidavit, by their parent or custodian, setting forth full information, as detailed in the law, concerning them.⁴⁸ This affidavit must be accompanied by independent evidence, which may be either a birth certificate from the legal custodian of the public registry of births for the place where the child was born, or, if such birth certificate cannot be had, a certificate of baptism from the person having custody of the church or parish record of baptisms where the child was baptized.

in better work opposed it; even state officials, whose duty it was to enforce the old laws, argued speciously against the more comprehensive protection of children.” (Sept. 1, 1904.)

That there was strong opposition in the Senate is apparent from the delay in the progress of the bill. Indeed, it was feared by many friends of the bill that it would never get through that body. The writer has been told by one who was in a position to know, that if it had not been for pressure brought by Governor Murphy at critical moments the measure would have been lost by the way.

⁴⁶ Section 1.

⁴⁷ Section 3.

⁴⁸ The form of affidavit required by the inspection department calls for the name of the child, his residence, place and date of birth, name of father, maiden name of mother, name and location of the church attended by the child, the date of his baptism with name and location of the church where he was baptized, name and location of the school last attended. In the case of foreign born children, a further statement is required that the child described in the affidavit is the same as the one mentioned and described in the passport which must accompany the affidavit.

In this latter case, the affidavit shall set forth the age at which the child was baptized. But if the certificate of baptism does not state the age at the time of baptism, other evidence must be furnished to show that age. This contingency, however, is infrequent. The baptismal certificate is used widely, but almost wholly in the case of Catholic children, who are baptized very shortly after birth, and whose certificates always state the date of birth as well as the date of baptism. For foreign born children is prescribed a similar affidavit from their parent or custodian, supplemented by the passport, or a true copy thereof, under which they entered the country. And the affidavit must state that the child named therein is the same as the one described in the passport.⁴⁹ This documentary evidence of age, whether for native born or foreign born, must accompany the affidavit. The affidavit and accompanying papers are taken by the child to his prospective employer as evidence that he has reached the age beyond which the law permits him to work. It not infrequently happens that a birth certificate or a baptismal certificate cannot be obtained by a native born child and that the passport has been lost in the case of a foreign born child. In such cases the commissioner of labor,⁵⁰ and he only, is authorized to issue a permit of employment upon any evidence of the child's age that satisfies him. This permit then accompanies the affidavit as the supplementary evidence of age.

The law does not command employers to require this evidence from children employed by them, but it puts them

⁴⁹ Passports are the only evidence of age for foreign children which are mentioned in the law. But other evidences are accepted by the department. Foreign birth certificates, and even a school report for a child born in Hungary were among the papers found by the writer in factories visited by him.

⁵⁰ The chief of the department of inspection is known by this title.

under the strongest possible inducement to do so by providing that if these documents are filed with them at the time a child is employed, and if correct copies are mailed to the department at Trenton within twenty-four hours after they are filed, they will be accepted as conclusive proof of the child's age in any suit against the employer for violation of the law.⁵¹ So that, unless an employer chooses to take the risk of employing a child under age, he will refuse to employ an applicant unless and until the latter furnishes the prescribed evidence of age. The fact that this is optional may seem at first thought to be a fatal weakness in the law. But this unique provision is actually one of the most valuable features in it. The risk attending the neglect of the option is so great that employers almost universally require an applicant to bring the specified evidence with him. When this is sent to Trenton, the department is given the opportunity, at the very outset of the child's employment, to test his claim that he is of legal age for working. It results that children who are under age and who, therefore, cannot supply the needed evidence do not find employment in the first place, except with the most venturesome manufacturers. Even then they are liable to be caught up by the inspector when he makes his call.

The act empowers the inspectors to prepare these affi-

⁵¹Mr. Swayze's idea in drawing the law in this way was this. Employers would not require such evidence unless there was some motive to do so. A penalty for failure to do so would supply one form of motive. But that would be ineffective unless enforced, and enforcement would add one more care to the department. But by absolving from responsibility those who should comply with the prescribed practice, employers would be subjected to the strongest possible motive so to comply. Those who might refuse would also probably disregard the liability to a penalty. Thus as good an observance of the practice would be secured without imposing on the department any burdens of enforcing it. This will be discussed later.

davits, but not to charge any fee for it. Also the affidavits may be prepared by any person authorized by law to administer an oath. In practice, most of those made out by such persons are the work of notaries public. This, however, does not permit the falsification practiced under the old law, for the affidavit itself is of no value. It must be accompanied by the prescribed evidence of age. Inconsistency between the affidavit and the supplementary papers would be at once detected when the copies were sent to the department at Trenton, or by the inspector in the factory. The only room for deceit is in securing false papers or in altering them after they have been secured. As to the former, the probability of deliberate falsehood by public registry officials or the parish clergy is not very great. As to the latter, attempts are made to alter papers, but usually it is so bunglingly done that it is immediately detected. The general permission to prepare these papers, therefore, does not open much of a loophole to the continued employment of children before they reach the legal age. The evil in it lies in the added annoyance to the inspectors and in the fact that notaries who are careless or, not infrequently, unscrupulous take an affidavit for the sake of the fee, although the papers offered to supplement it show the child to be under age or are altered, and even sometimes plainly altered. In such cases the parents pay the fee to no purpose, for if the child succeeds in getting employment, it is sooner or later discovered. This evil, however, is relieved by the authority of the inspectors to take affidavits for this purpose. The fact that they may not charge any fee and the fact that they understand the requirements and have an interest in seeing that the requirements are met, are causing an increasing number of applicants to go to them rather than to a notary.

Besides this check on the initial employment of children under age, the subsequent check on their employment through the visits of the inspectors is strengthened by the requirement that employers of minors under sixteen years of age shall keep a register of "all minors working under certificates, transcripts, passports, or affidavits; such registers and certificates, transcripts and affidavits shall be produced for inspection upon demand" of the inspectors or of such truant officers as may have been authorized by the commissioner of labor to demand them. Failure to keep such a register or refusal to produce it or the documents for inspection incurs a fine of \$50 for each offense.⁵² Presumably, it was the intention in this section to require a register for every child employed under sixteen years. But, by the wording, it demands it only for those under sixteen who are working under the documentary evidence of age prescribed. As the exaction of this evidence is optional with the employer, it leaves the completeness of his register correspondingly optional. Yet, as already stated, it is the usual choice of employers to require the evidence specified and to keep the papers on file, so that the inspector has at hand in the factory this aid in checking up any child he may find whose age may be questioned.

The law aims to prevent deceit in making out the papers by a provision that any person who swears falsely to an affidavit or who presents a certificate or passport known to be false, or any person who aids in any of these acts, is subject to a penalty of \$50.

One more provision in the administrative features of the law remains to be stated. In case there is doubt of the age of a child, the commissioner of labor or any inspector is empowered to demand of the parent or custodian satis-

⁵² Section 5.

factory proof of the child's age within five days, after which, if it is not then furnished, the commissioner of labor, but not the deputy inspector,⁵³ may order the employer to discharge the child until such proof is furnished. Failure to do so incurs a fine of \$50.

The practical operation of these provisions may be briefly summarized. As a condition of securing employment, a child under sixteen must bring the prescribed papers to the employer, unless the employer is willing to run the risk of the penalty if the child prove to be under age. Having the papers, the employer is impelled to send copies to the department at once in order to relieve himself of responsibility in case the papers prove to be false. This gives the department the opportunity to examine the papers at the beginning of the child's employment and, if they are found insufficient, to order the child to supply satisfactory proof of his age within five days; or, in case he was trying to deceive and cannot do so, the department has the opportunity to order his discharge at the outset of his employment. Without this opportunity, the child might continue undisturbed until the next visit of the inspector. Another merit in this provision is that, if a child is discharged from one factory, he cannot secure employment anywhere else without the department being informed of it at once, when the new employer sends the copies of

⁵³The original proposal gave the inspectors authority to discharge any such child forthwith. But this was objected to by the employers. A delegation from the mill owners of Passaic county urged upon the Governor that a reasonable time be given in which to furnish proof and that orders of discharge be made only by the commissioner. (*Paterson Guardian*, Feb. 24, 1904.) This was reasonable. Otherwise an employer might have his force depleted by the discharge of a child who could, in a short time, establish his right to work. Then, the power of discharge in the hands of the deputies was one cause of abuses under the old law.

the child's papers to Trenton. The hide-and-seek game which discharged children could play with the inspectors under the old law is thus forestalled.⁵⁴ If, on the other hand, an employer should assume the risk and fail to send copies of a child's papers to the department, or if he should fail to require them at all, there is left the check of the inspector's visit. If the inspector takes the name of every child whose appearance supports a reasonable question as to his age, he can check up his suspicions by consulting the employer's file. If there are no papers there for the child in question, or, if the papers, because of not having been sent to Trenton, are unsatisfactory, the inspector, as well as the commissioner of labor, can demand the child to bring satisfactory proof of his age within five days. If that is not done, the commissioner of labor may order the employer to discharge the child. The department can also investigate the case and, if proof is found that the child is under age, prosecute the employer, who, be it noted, would in the present case be without the immunity he might have had by securing the papers and sending them to Trenton. In a word, then, if the employer secures the papers and submits them to the commissioner, the department is enabled at once to pass upon the legality of the child's employment. The department loses its right to prosecute the employer in case of illegal employment, but that is of no consequence because it secures compliance with the law without the need of prosecution. If, on the other hand, the employer does not secure and submit the papers, the department has the usual recourse open to it anyway, through inspection

⁵⁴Mr. Swayze, who drew the law, informed the writer that he regarded this provision of the law as its most valuable feature. It was not until he hit upon this device that he felt that he had the law really air-tight.

and prosecution, to secure compliance with the law. It will be noted that in dealing with suspicious cases, the department does not have to prove anything as to a child's age in order to stop his employment. The burden of proof is upon the parent. If the department is unsatisfied with the proof offered, it can refuse to let the child work until satisfactory proof is furnished. Under the old law, practically, a child might work until the department proved him to be under the legal age. Under the present law, he may not work until he is proven to be above the legal age.

Another safeguard against the return to employment of a child discharged from a factory is the provision requiring the department to send within twenty-four hours to the principal of the local public school the name and residence of the child and the place from which he has been discharged.⁵⁵ This opens the way to get him under the surveillance of local school officers and prevent him from running the street. The effectiveness of this provision depends upon the enterprise and interest of the local school authorities. But when that is strong, this provision affords one more channel through which that influence can be counted for the enforcement of the law.

The present law contains no provision for a minimum school attendance or other educational qualification. The principle of a minimum physical condition is retained in section 7, which empowers the commissioner or any deputy to demand a "certificate of physical fitness from some regular practicing physician" for any minor under sixteen years of age who may appear to the inspector to be physically unable to do the work in which such minor is employed. Until the certificate is furnished,

⁵⁵ Section 45.

the employer may be forbidden to employ the child under penalty of a fine of \$25.

Turning from the minimum conditions of employment to other restrictions, the hours for minors under sixteen employed in manufacturing were limited to not more than ten in any one day or fifty-five in any week.⁵⁶ By another section, no minor under sixteen shall be "required, allowed, or permitted" to clean machinery in motion or work "between the fixed and traversing parts" of any machinery while it is in motion.⁵⁷ Again, factories and workshops in which women and children are employed, and where dusty work is carried on, are required to be lime-washed or painted at least once in every twelve months.⁵⁸

Supplementary Measures: Extension of Policy to Other Employments.—Since 1904 the efforts of those behind child labor legislation have been directed toward extending the restrictions to other employments and to prohibiting night work for children. The year 1905 was allowed to go by apparently because it was thought best not to attempt any new legislation until the act of 1904

⁵⁶ Section 9. Originally this section provided also, as noted above, that no child under sixteen should work between six o'clock in the evening and six o'clock in the morning. This section was attacked more fiercely than any other pertaining to child labor. The glass industry wished to employ the tending boys during the regular night shifts. The textile, and some other industries with a seasonal demand for their product, wished to run overtime at certain periods of the year, and many wished to run sixty hours a week. Though the bill left the committee unamended, the prohibition of night work was stricken from the bill on the floor of the Senate. The debate on the bill centered upon this section in its bearing on the glass industry. Only one senator voted to retain this clause.

⁵⁷ Section 21.

⁵⁸ Section 24.

had gotten well into operation and the business of the state had become adjusted to it.⁶⁴

In his message of 1906, Governor Stokes suggested the extension of the act of 1904 to mercantile and other pursuits as a "subject worthy of thought" by the legislators.⁶⁵ In that year a bill was introduced as an amendment to the compulsory attendance feature of the school law, but which might have had important effects on the employment of children in occupations not included in the act of 1904. This measure⁶⁶ forbade that any child between seven and fourteen years of age,—the age for compulsory attendance,—should be "employed, suffered, or permitted to work at any gainful occupation" during school hours. Truant officers were given authority to enter any place where gainful occupations are carried on to ascertain whether any minors are employed there in violation of the act. The enforcement of such a law would keep children out of all employments where it was not profitable to use them only for the days and hours when the schools are not in session. But this measure would have been ineffectual in most parts of the state; for, as is shown in the discussion of the compulsory attendance law, the provision of truant officers, upon whom its enforcement would have depended, was optional with each locality, so that the efforts to enforce the attendance laws were very uneven throughout the state. The measure, however, did not become a law, although it appears to have passed both houses.⁶⁷

⁶⁴ *N. J. Rev. Char. and Cor.*, III, p. 215.

⁶⁵ *Message, Gov. Stokes*, 1906, p. 11.

⁶⁶ House Bill 241, 1906.

⁶⁷ It is recorded as having passed the House, (*Min. House of Assem.*, 1906, p. 584) and the Senate (*Senate Journal*, 1906, p. 860), and as having been delivered to the Governor. (*Min. House of Assem.*, p. 1299.) Yet it is not found in the session laws for 1906,

In 1907 two bills were introduced to extend the child labor restrictions to other employment. One merely applied the prohibition to mercantile establishments, and this in a very crude way.⁶⁸ This failed to pass even the House. The other was in the form of an amendment to the general public school law. It would have extended the restriction to all occupations and would have added an educational minimum to the minimum age limit.⁶⁹ But this bill also failed to pass.⁷⁰ In the session of 1909, and again in 1910, was introduced a comprehensive bill applying the law for factory employment to children in mercantile employment during the hours the public schools are in session. This had the support of the child labor organizations and of the commissioner of labor.⁷¹ It passed the House each session but failed to make any im-

or in the file of passed and approved bills kept by the Secretary of State, or in the record of vetoed bills, or among the files of "dead" bills. Apparently it was lost or stolen, a fate which sometimes befalls bills in the rush at the end of the session.

⁶⁸ House Bill 287, 1907. It had no provision whatever for testing the age of children so employed.

⁶⁹ House Bill 316, 1907. It added to the section on compulsory attendance a provision that no child under sixteen should be employed "at any gainful occupation" without a certificate from the local board of education, or some officer designated by it, showing that there had been left with the board proof that the child was at least fourteen years old, like that required in the act of 1904, and showing that he could read and write legibly simple sentences in English. The certificates were to be signed by the child as well as the official issuing them. Employers were required to keep these certificates on file and offer them for examination by factory inspectors and truant officers.

⁷⁰ After being twice recalled for amendment, the measure passed the House without a dissenting vote near the close of the session. (*Min. House of Assem.*, 1907, p. 1026.) It was then rushed through the Senate in one day and passed with only one negative vote. But the passage was at once reconsidered without a single protesting vote. (*Senate Journal*, 1907, pp. 916, 923.) There the record ends.

⁷¹ *Rept. Dept. of Labor*, 1909, p. 12.

pression on the Senate.⁷² Thus have failed all efforts to extend the minimum age limit beyond manufacturing employments, to which alone it is still restricted.

Night Work for Children.—The efforts to abolish night work for children under sixteen years of age have been maintained with untiring persistency against an equally persistent opposition, chiefly from the glass industry. Success was first attained in the field of bakeshop and mercantile employment, but only with qualifications. In 1903 the bakeshop law was amended. One provision of the amending act forbade the employment of minors under eighteen years of age in any bakery between seven o'clock in the evening and seven o'clock in the morning.⁷³ But this was generally disregarded. In 1905 the bakery law was up again. On this occasion the prohibiting clause was improved to read that no such minor "shall be employed, allowed, permitted, or required" to work in a bakery between the hours stated.⁷⁴ This law was the work of the bakers' union, supported by the Federation of Trades and Labor Unions.⁷⁵ The Master Bakers' Association at once took measures to secure the alteration of this law.⁷⁶ But two attempts to reduce the age of restriction from eighteen to fifteen have failed.⁷⁷

⁷² A copy of this bill and the facts concerning it were furnished to the writer by Commissioner of Labor Bryant.

⁷³ *Pub. Laws*, 1903, pp. 98-101, sec. 5.

⁷⁴ *Pub. Laws*, 1905, pp. 203-6, sec. 9.

⁷⁵ *Trade Union Advocate*, Apr. 24, 1905; *Proceedings Conv. Fed. Trade and Lab. Unions*, 1905 (not paged).

⁷⁶ *Proceedings Conv. Fed. Trade and Lab. Unions*, 1905 (not paged).

⁷⁷ House Bill 275, 1907. This passed the House by a vote of 53 to 0 (*Min. House of Assem.*, p. 610), but was not reported from committee in the Senate. The second attempt was in 1908. House Bill 80 passed both houses before the labor people were aware of its

In 1906 a bill was introduced into the House,⁷⁸ as the result of an agitation by the Consumers' League supported by the Childrens' Protective Alliance,⁷⁹ prohibiting work by children under sixteen at night in mercantile establishments. This met the opposition of the glass blowers who feared that it might prepare the way for a measure affecting their industry.⁸⁰ It passed the House after being lost for want of a sufficient majority,⁸¹ but was never reported from committee in the Senate. The same bill was introduced the next year in behalf of the same agencies.⁸² This time it became a law, and without amendment.⁸³ By its provisions, no child under sixteen years may be employed in any mercantile establishment for more than fifty-eight hours a week, or between seven o'clock in the evening and the same hour in the morning. But exception is made for the one day each week, when the hour is extended to nine o'clock, and for the time between December 15 and December 25, when the hour is ten o'clock. To insure the observance of the age limit, every mercantile employer of children "actually or apparently" under sixteen years old is required to keep on file the same evidences of age as are prescribed in the act of 1904. The commissioner of labor, similarly, is given the same power and duty to enforce this law. The organizations behind the measure would have wished that the exceptions in the law had not been allowed. But it prob-

purport. Their legislative committee then interceded with the Governor, who vetoed the bill. *H. J. Gottlob, Chr. Leg. Com.*

⁷⁸ House Bill 386.

⁷⁹ *N. J. Rev. Char. and Cor.*, V, 35.

⁸⁰ *Trade Union Advocate*, Mar. 30, 1906. To meet this opposition, the bill was amended so as specifically not to apply to manufacturing establishments. *Min. House of Assem.*, p. 885.

⁸¹ *Min. House of Assem.*, pp. 847, 886.

⁸² *N. J. Rev. Char. and Cor.*, V, 353.

⁸³ *Pub. Laws*, 1907, pp. 552-5.

ably could not have passed without them. In its present form, it is said to have met the approval of the leading department store managers of Newark, to whom it was submitted.⁸⁴

The efforts to commit the state to the prohibition of night work for children in manufacturing did not succeed until the last session of the legislature. When the clause prohibiting work at night in bakeries by minors under eighteen was revised in 1905, it was hoped by the opponents of all night work by children that the discussion of this provision might facilitate the passage by the next legislature of such a law as they desired.⁸⁵ As the time for the session of 1906 approached, a campaign was begun under the leadership of the Childrens' Protective Alliance,⁸⁶ representing the charitable and philanthropic interests, and supported by the officers of the Federation of Trades and Labor Unions⁸⁷ and the National Child Labor Committee.⁸⁸ A bill was introduced restoring to the law of 1904 the clause prohibiting night work by minors under sixteen years between six o'clock in the evening and the same hour in the morning.⁸⁹ The opposition of the glass industry, however, prevented its passage,⁹⁰ in spite of a very general support. The next year

⁸⁴ *Newark Evening News*, May 15, 1907.

⁸⁵ Hugh F. Fox in *Annals Amer. Acad.*, XXV.

⁸⁶ *N. J. Rev. Char. and Cor.*, V, 35.

⁸⁷ *Ibid.*, V, 71; *Daily State Gazette*, Jan. 29, 1906.

⁸⁸ The National Child Labor Committee prepared and sent out in March a four page circular defending the proposed law and urging individuals and organizations to express themselves in behalf of the bill by resolutions and petitions and personal letters to their representatives.

⁸⁹ House Bill 314.

⁹⁰ On third reading an assemblyman from the glass districts attacked it (*N. J. Rev. Char. and Cor.* V, 153) and it was recommitted. (*Min. House of Assem.*, p. 599.) At a hearing afterward held there appeared in behalf of the bill the presidents of the Chil-

the issue was resumed. The Childrens' Protective Alliance had the same bill introduced again.⁹¹ A determined agitation was carried on in its behalf. The measure passed the House⁹² after a delay of a month and a half, during which time a hearing was held upon it by the committee having it in charge.⁹³ But the opposition of the glass industry again defeated it, for it was never reported by the Senate committee, although two hearings were given it.⁹⁴ The industrial depression and the passage by the legislature in 1907 of a measure which indirectly restricted the supply of boys for the glass industry⁹⁵ led some of the advocates of the night work bill to consider the year 1908 as unfavorable for a renewal of the contest with the glass interests.⁹⁶ However, the National Child Labor Committee and the Consumers' League had the same bill introduced that year.⁹⁷ Again the measure

dren's Protective Alliance, the State Charities Aid Association, the Consumers' League, the secretary of the National Child Labor Committee, the president of the Federation of Trades and Labor Unions, the first vice-president, who was a glass blower, and several minor officials and members, and besides a manufacturer. The only opposition to the bill was by William M. Doughty, a glass blower and at one time an officer in the national organization of glass blowers, and some fellow glass blowers. (*Newark Evening News*, Mar. 21, 1906.) But the bill was never reported again.

⁹¹ House Bill 90. *N. J. Rev. Char. and Cor.*, V, 351.

⁹² The vote was 44 ayes to 15 nays. *Min. House of Assem.*, p. 334.

⁹³ For arguments see *Newark Evening News*, Feb. 26, 1907.

⁹⁴ For accounts see *Ibid.*, Mar. 26, and Apr. 2, 1907.

⁹⁵ This regulated the adoption by residents in New Jersey of children brought from without the state.

⁹⁶ *N. J. Rev. of Char. and Cor.*, VII, 128; Letter by Mrs. Emily E. Williamson to National Child Labor Committee, dated Mar. 19, 1908.

⁹⁷ House Bill 211.

passed the House⁹⁸ after hearings before the committee,⁹⁹ but was held up in the Senate. A like fate befell a bill in 1909, in spite of a vigorous campaign by the leaders of opinion.¹⁰⁰ When the legislature met again in 1910, the advocates of the law pressed their measure again with a more perfect organization. This time they had the sentiment throughout the state aroused to the point of exerting pressure upon the legislators. Besides the Child Labor Committee of the state, the Consumers' League, labor unions, women's clubs, churches, and other organizations took an active part. Newspapers voiced this sentiment. Spokesmen for this opinion went to Trenton and lobbied for the bill at critical times. The measure, fixing an age limit of sixteen years for night work, passed the House in due time, as usual. But it met determined opposition in the Senate. Senator Plummer, chairman of the committee to which it was referred, represented Salem county in the glass manufacturing section. He frankly declared his opposition. But the public pressure was too strong. A caucus¹⁰¹ of the Republican majority decided to pass the bill after a compromise in which an amendment was added making the age limit fifteen years for one year before it becomes sixteen years. This adds to the child labor code the provision that after July 1, 1910, the employment of minors under fifteen years of age in factories between seven P. M. and seven A. M. is prohibited; after July 1, 1911, the age limit for such pro-

⁹⁸ *Senate Journal*, p. 832. Minutes of Assembly not available at time of writing.

⁹⁹ *Newark Evening News*, Mar. 17, 1908; *State Gazette*, Mar. 18, 1908.

¹⁰⁰ See *Newark Evening News* during the session of the legislature.

¹⁰¹ *Newark Star*, Apr. 1, 1910.

hibition will be raised to sixteen years.¹⁰² This act is a most important addition to the law and is regarded by its advocates as a most satisfying achievement, after five years of persistent effort.

Judicial Interpretation:—The act of 1904 has been subjected to judicial interpretation at two points. The Skillman Hardware Manufacturing Company of Trenton carried to the Supreme Court some cases early brought against it for employing children under age. The plea was that the act was unconstitutional in that the object of it was not expressed in the title and that it violated the fourteenth amendment by abridging the privileges and immunities of citizens. The first point was entirely technical, but the second challenged the policy in a vital particular. The court, however, rejected both contentions and sustained the law.¹⁰³ Another case involves the right of inspectors to enter an establishment for the purpose of an inspection. It was brought against the N. Z. Graves Company of Camden. The trial judge directed a verdict for the company, but the state appealed to the Supreme Court and secured a decision overruling the trial judge and ordering a new trial. This did not dispose of this particular case, but it is considered as establishing the right in question, and the defendant company so accepted it.¹⁰⁴

The Compulsory Attendance Law: Act of 1903.—The interest in the welfare of children, as shown in the sentiment against child labor, appeared also in the demand for a more effective compulsory attendance law. The move-

¹⁰² The writer has not had access to this law, but the provisions were supplied to him by Commissioner of Labor Bryant.

¹⁰³ *Rept. Dept. of Labor*, 1908, p. 7-8. The writer has not seen the opinions of the court in either of these cases.

¹⁰⁴ The case is reported in 71 *Atlantic Reporter*, p. 60, but the writer has not had access to it.

ment toward that began in 1900. It had been felt that the whole school law needed revision and codification. The agitation for that led to the appointment of a commission by the Governor to prepare a measure. This was reported to the legislature in 1900 and became the act of March 23, of that year.¹⁰⁵ This law very materially strengthened the provision for compulsory attendance. The act was found unconstitutional on grounds not concerned with the attendance requirements, as was also a succeeding act designed to meet the objections of the court, so that it was not until 1903 that the law was finally settled. But the stiffening of the compulsory attendance provisions by this measure deserves notice as indicating what the legislature had come to stand for on that matter. This is not to be taken as indicating any such agitation as preceded the passage of the child labor law of 1904. The sections in question in the law were framed by the commission, after open hearings and without pressure from any source, in accordance with its judgment and that of the educational authorities as to the needs of an effective school law.¹⁰⁶ The details of this act will be passed over, for they were largely the same as in the final act of 1903¹⁰⁷ which is here described.

Provisions of the Law.—By the new law the administrative weakness in the short period of attendance required by the law of 1885 was corrected and a large advance in policy was made. The state was now prepared to require that every parent or guardian send every child between the ages of seven and fourteen to a public school each day those schools were in session, unless excused by

¹⁰⁵ *Pub. Laws*, 1900, pp. 192-281.

¹⁰⁶ Letter from ex-Governor Stokes, who was in the Senate in 1900 and chairman of the commission to revise the law.

¹⁰⁷ Oct. 19, 1903, Second Special Session 1903. Bound with Laws of 1904.

the board of education because of physical or mental incapacity, or because of its receiving equivalent instruction in a private school or at home.¹⁰⁸

Authorization is given for parental schools for habitual truants and incorrigible children between seven and fourteen years of age,¹⁰⁹ who may be required by the local board of education to attend, or, with the written consent of the parent, to be confined therein. If any child refuses to attend, the board of education may have a warrant¹¹⁰ issued by a justice of the peace, police justice, or city or town recorder, and have the child brought before the court. The magistrate may return him to his parent, who assumes the responsibility for his proper conduct thereafter, or to his teacher on trial, or turn him over to the juvenile court, which may as an extremity commit him to be confined in a disciplinary institution.¹¹¹

¹⁰⁸ Sec. 153.

¹⁰⁹ The act of 1900 had fifteen years for the higher age. But its upper compulsory age was only twelve years, children between twelve and fifteen being required to attend only sixteen weeks each year as a condition for taking employment. The constraint of the parental school upon children over twelve, therefore, would have been only for the sixteen weeks out of each year; and the shortness of this period would, for reasons already noted, have hindered the exacting of even that. But the present measure, with its higher compulsory limit, permits the holding of children under this discipline, if necessary, until they are fourteen. Hence, although appearing in this feature to retreat one year in the application of the compulsory principle, it really makes a considerable advance.

¹¹⁰ By the act of 1900 the truant officer could arrest him without a warrant.

¹¹¹ This differs from the provision of the act of 1900, which empowered the magistrate to commit the child directly to confinement in the parental school or in a reformatory. This change was made because the regular session of the legislature in the early part of 1903 provided for the establishment of county juvenile courts. (*Pub. Laws*, 1903, pp. 447-80.) This substitution with reference to an independent sentiment, however, left the

Parental responsibility is insured by liability to the penalties for a disorderly person.¹¹²

The imperfect provision for truant officers was in part remedied.¹¹³ Boards of education were authorized, but not required, to provide one or more truant officers and fix their compensation. If it was wished, these officers might be secured from the local police force, where one existed, on a written request from the board of education.

Attention was also given to the problem of funds for school buildings and for the expenses of truant officers and parental schools. The legislature committed itself to an unlimited power of taxation to cities for the purpose of providing funds for current school expenses,¹¹⁴ but law somewhat awkward, if not obscure, as to the commitment of children to parental schools in districts not coterminous with a legal "municipality." The juvenile court act empowered the judge to commit children to a state reformatory, or to a public institution maintained by the county or by a city, town, township, or other municipality, for the "care, custody, instruction, and reform of juvenile offenders." It was thus not clearly and definitely stated between the two acts that the juvenile court could commit a child to the parental school in any district whatever. Yet the question concerns the consistency of the law rather than the practice under it, for small districts would not maintain independent parental schools. The law itself was set right by an act for county parental schools in 1906, which is noted below.

The principle, if not the form, of this new provision was an improvement over the act of 1900. By taking the power of commitment out of the hands of a magistrate as provided in the act of 1900, and putting it in those of the judge of the juvenile court,—who was the judge of the county court of common pleas for the time being,—it gave the disposition of the case to a man probably of larger calibre, and made the procedure more regular, thereby reducing the vulnerability of the law to attacks on its constitutionality.

¹¹² Secs. 154, 158.

¹¹³ Secs. 155, 156, 158, 160.

¹¹⁴ Secs. 75, 76, 95, 97.

not to an unlimited power to issue school bonds. Yet it made a concession in this matter. It limited the issue of bonds for the purchase of land and the construction of buildings to an aggregate of 3 per cent of the taxable value of real and personal property. But any charter restriction on a city's indebtedness in general was expressly held not to apply to issues of these school bonds. In this connection should be noted also an act of 1901¹¹⁵ which was incorporated in the law of 1903.¹¹⁶ The basis for apportioning the proceeds of the state school fund to the various localities had been the number of children of school age. By this act, this was changed to the aggregate number of days attendance of all pupils during the year. The change was in part due to the abandonment of the annual school census, because of the continued unreliability of the returns. But Governor Voorhees, in his message of 1901, urged as "a most important reason" for the change that it would stimulate communities to increase their enrollment and bring up the regularity of their attendance.¹¹⁷

The act of 1903 had not been in operation very long before it was discovered that the wording permitted an ingenious evasion. According to the law, the person having legal control of every child between seven and fourteen years old shall, "unless such child is being taught at home in the branches usually taught in public schools to children of his or her age," send the child to "a day school each day while such school shall be in session", unless excused by the board of education as provided. Literally there was no requirement as to the length of the sessions of the day school attended or as

¹¹⁵ *Pub. Laws*, 1901, pp. 378-80.

¹¹⁶ Sec. 16.

¹¹⁷ *Message Gov. Voorhees*, 1901, p. 14.

to the subjects taught there, though, if taught at home, the child must have the usual public school branches. It was found in Newark that some parents had organized a "school" which their children attended for one hour early in the day, after which they were free to work. To meet this subterfuge, the act was amended in 1905 so as to require that specified common school branches be taught in the school attended and that the attendance of the child be for the days and hours that the public schools are in session.¹¹⁸

Defects of the Attendance Law of 1903.—The sections bearing on compulsory attendance in the act of 1903 are well drawn for administrative purposes except that the use of the provisions for enforcement are left to the option of the localities. This, in effect, leaves the whole policy of compulsory attendance to the discretion of each community, except in so far as each community is subjected to the tug of the state's resolution in the matter. This is at the heart of numerous criticisms upon it. It has been urged that a centralized state administrative force, similar to the factory inspection, is required.¹¹⁹

Another failing was that the provision for parental schools hardly met the case of small towns and cities. These would not have enough children requiring such discipline to justify the expense. And no authorization was given for union schools of this character for several districts.¹²⁰ Again, the absence of a school census has been felt to be a handicap upon efforts to discover

¹¹⁸ *Pub. Laws*, 1905, p. 335.

¹¹⁹ Supt. Maxson of Plainfield, in *First Conf. Char. and Cor.*, Feb. 1902, p. 135. Also by various educational officers and others in interviews with the writer.

¹²⁰ Supt. Asbury Park, in *Rept. Supt. Pub. Instr.*, 1904, p. 82. Supt. Maxson, in place cited, p. 133.

every child of school age.¹²¹ Some cities have taken their own census; but this is too expensive for all to undertake. The state's experience with a school census has not been such as to encourage a return to one. But the change in the basis of apportioning the school monies has removed the chief reason for the former unreliability of the returns and the present interest in the compulsory law adds to the reasons for renewing it.

Supplementary Acts Since 1903.—The matter of parental schools has received further attention. By an act of 1906,¹²² counties with a population of 150,000 or more and having a juvenile court were authorized to establish a "school of detention" for delinquent children, including those habitually truant or disorderly in school. Funds might be raised by issuing county bonds for an amount not over one-half of one per cent of the ratables of the county. An act of 1908¹²³ removed the population limit in the law of 1906 and thereby permitted any county having a juvenile court to provide itself with a detention school. The act went further and made each such school with its land a special school district entitled to its share with other districts in the money provided by the state for public schools. In the case of counties where such an independent school would not be justified by the number of children, the county authorities are empowered to arrange with any recognized private society or institution for the care of the children under limitations in the law guarding against abuse or neglect.

Another amendment of the 1908 legislature altered

¹²¹ Supt. Millville, *Rept. Supt. Pub. Instr.*, 1905, p. 135; Supt. Newark, *Rept. Supt. Pub. Instr.*, 1906, p. 155.

¹²² *Pub. Laws*, 1906, pp. 54-6. This was the result of an agitation of three or four years. The state board of education took up the matter in 1905.

¹²³ *Pub. Laws*, 1908, pp. 625-8.

the standard for required attendance.¹²⁴ By this law, every child is required, in effect, to attend school until he is fifteen years old, in any case, and longer, if necessary, until he completes the grammar school course prescribed by the state board of education. If he has met this minimum exaction and is still within seventeen, he must, unless he becomes employed, attend further until he becomes seventeen, at a high school or manual training school. An exception permits a child to be employed as early as fourteen years of age when the board of education is satisfied that employment is necessary. In this case the board of education shall give a certificate exempting the child from attendance at school so long as such employment continues. This law was passed under the pressure from its sponsor, Senator Price, without careful consideration by the legislators, many of whom have confessed that they misjudged its purport.¹²⁵

¹²⁴ *Pub. Laws*, 1908, pp. 445-6.

¹²⁵ *Trenton Times*, Oct. 27, 1908; *Newark Evening News*, Jan. 7, 1909.

CHAPTER VI.

MERITS AND DEFECTS OF THE PRESENT STANDARD

An examination of the present standard in operation shows it to have a high degree of excellence. Questions of purpose, such as what the age limit should be, or what industries or occupations should be included, are not now involved. Accepting the purpose of the policy and the age limit of fourteen years, the object here is to examine the merits of the legal declaration of the policy as a standard for attaining the purpose of the policy.

Pertaining to the Age Limit.—The clause prohibiting the employment in factories of children under fourteen years is drawn with such care and precision that no room is left for the subterfuges practiced early in the preceding period to evade the law, or for those sub-contractual relations which fell outside of the terms of the first enactment. The responsibility for the presence in a factory of a child under fourteen at work is definitely fixed upon persons whom the law can reach.

The second point of interest, the provision for establishing the age of any child called in question, is arranged for with equal precision and almost equal merit. The burden of proving the age is put unequivocally upon those in the best position to do so, namely, the parents or guardians. Not only is the burden of proof put upon the parents, but the sort of proof to be accepted is clearly specified and is required to include, besides the declaration of the parents, documentary evidence independent

of that declaration. Deceit can be practiced by the parents only by alteration or forgery of these supplementary papers, or by securing the connivance of the public registrar of births, or of the clergyman, or custodian of the baptismal records, or of the officials who issue the passport. Such deceit is checked by the ease of detecting most alterations and forgeries and by the obstacles to securing the connivance of the other parties. Besides, there are penalties upon such forms of deceit. All this furnishes the administrative department with proof of great reliability. It will be noticed that the school records, which are accepted in many states, are here passed over. Such records are not of quite the same reliability as the evidence prescribed; for parents are under an inducement to overstate the ages of their children to the school officials. It is not alone that they look ahead to their early employment, but also that the mother with many children or with helping to earn the family income is induced to state her child's age too high in order to get him into school and be relieved of the care of him during the day.

There are, however, two respects in which the reliability of the evidence prescribed in the law is lessened. The penalty upon parents is ineffective because the fine, \$50, is such a large sum for most parents of child workers that no magistrate will impose it. If he did, there would be few cases where it could be collected, because of the poverty of the defendant. There is a wide opinion that it ought to be graded from a much lower sum.¹ The other weakness is the omission to re-

¹ The commissioner of labor complained of this amount of the fine in his report for 1905 and suggested that it be left to the discretion of the court. (P. 4.) He made similar complaint the next year and suggested that it be fixed at \$25. The same

quire a personal description of the child in the affidavit. This opens the way for a younger child to assume the name and use the papers of an older child to whom they are issued. That this has been done seems clear from the testimony of inspectors. But that it is practiced extensively is very doubtful. Unless the true age of the child is close to that stated in the papers he assumes, the disparity will attract the attention of the inspector and cause an investigation at the home of the child. However, this matter and that of the penalty upon parents are defects in the law deserving attention at the first revision.

The provisions for the issue of the papers is not so praiseworthy. The affidavits may be taken by the inspectors, but without a fee, or by any person authorized by law to administer an oath. Of the affidavits taken by the latter class, notaries public take far the greater number. But the notary's interest in the observance of the law is frequently offset by other considerations. In the first place, there is the fee. That is his whether the affidavit is true or false, for his part is to certify that the statements made are sworn to, not that they are true. In the second place, foreign born parents are likely to go to a notary of their own nationality whose sympathies impel him to take the affidavit without scrutinizing

recommendation has appeared in each succeeding report. Several deputy inspectors and others have expressed the same view to the writer.

A practical difficulty is encountered in the fact that the procedure in these cases is by action for debt, in which the fine is sued for by the state. As suit must be for a definite fixed amount, there is no room for the magistrate to alter the sum, when judgment is given, according to his judgment of the deserts of the defendant. It has been suggested that the commissioner of labor be empowered, after the suit is prosecuted and before judgment is declared, to reduce the amount sued for.

the supplementary evidence for alterations or for other defects or ineligibility. It is not to be understood that this influence of personal sympathy is restricted to cases of foreign born children. Parents with children under age have for both these reasons secured from notaries the papers admitting them to employment. Unless the employer is careful to scrutinize the papers, or to send to the department at Trenton the original documents instead of copies of them,—which alone the law requires, and which would not disclose the alterations,—the child can continue in employment until an inspector's eye falls upon the defective original document in the employer's files. As a matter of fact, the number of such cases does not appear to be large, although obviously it cannot be known with much accuracy. Yet here is a loophole that should be closed. Besides such children under age, the inspectors are constantly finding papers for children of full age which fail to satisfy the law because of some carelessness by the notary who prepared them. This is a more troublesome consequence than the former. If the law required that all such papers should be prepared by authorized agents of the department, fully instructed in the requirements of the law and dominated by the *esprit de corps* of the department, no affidavit would be taken unless the proper sort of supplementary evidence was offered and was without alterations. That is what is done, in effect, at the offices maintained by the department in Newark, Hoboken, and elsewhere, so far as parents use the facilities of these offices instead of going to notaries. But the benefit is lost for those who choose the latter. And that is what those are likely to do who wish to evade the law.

Such a restriction on the issue of the papers would have a further advantage in relieving the inspectors of

much of the responsibility of passing upon the adequacy of the papers while on their rounds of inspection. The documents submitted by parents are written in various languages. An inspector must be able to make out enough of these to ascertain their genuineness and the age of the child. It is needless to say that this cannot always be done by the inspectors. An authorized agent, chosen with this in mind, could prepare an English translation over his signature which would present the evidence to the inspector in a quickly readable, certified form.

The force of the foregoing criticisms on the issuing of the papers is in large part offset by the novel provision in the law which induces the employer to send to the department at Trenton copies of the papers presented by a child within twenty-four hours after they are filed. If a notary issues an affidavit accompanied by a document of the wrong sort, or improperly made out, or which fails to agree with the allegations in the affidavit, the department at once has its attention called specifically to the defensive evidence and is afforded an opportunity to order the child to supply satisfactory evidence or cease work. Otherwise, the error would be undiscovered until the visit of an inspector. Even then it might pass unnoticed if the inspection were made hurriedly or carelessly. Also any evasion of the law through failure of an inspector properly to translate a document in another language would be forestalled at the office of the department. But the above criticism has force in so far as employers accept the risk of defective papers and fail to send them to Trenton.

Experience has shown this provision to be the most effective administrative device in the law. The scheme of bringing under the immediate review of the central

office all documentary evidence filed with employers, upon which children are admitted to employment as being of the age required, deserves a much wider use.² The same strict enforcement cannot be secured alone by any restriction of the issue of the papers to authorized agents. There would need to be several of these agents to afford ample opportunity to parents to secure the papers. That would admit lack of uniformity and open the door for mistakes. Besides, even waiving that objection, it would only insure that the papers when issued were correct, but would not put any pressure upon employers to insist on the presentation of such papers by the children. This the New Jersey law accomplishes by granting immunity to employers who secure the papers and submit them at once to the approval of the department. Another result, impossible with any other device, is the prevention of discharged children from getting employment at a new place. When the department orders a child discharged, he cannot find employment elsewhere without the fact being known to the department at once through the submission of the papers to it by the new employer. Without this check, a persistent child might be discharged a dozen times in a year and find reemployment each time. The force of the law would be expended in merely interrupting the continuity of his employment, not in preventing it. Finally, the New Jersey law solves the problem of relieving the well-intentioned employer from liability through the mistakes or crookedness of parents, or others concerned in preparing the papers, without opening any loophole to those who would evade the law

² So far as the writer is aware, this is not found in the code of any other state. If that is so, the author of the law deserves credit for the invention of such an invaluable device.

if they could. This is a problem of great importance and no small difficulty in the laws of most states.

An objection to the New Jersey plan may seem to lie in the extra office work required in the examination of the papers. Practically, this has not proven important in New Jersey. During the last year, some 7000 of these have been submitted to the department.³ Since the act went into effect in 1904, the number aggregates 26,000.⁴ Yet these have been attended to with an office force of three persons besides the commissioner and assistant commissioner. Most of these would be required in any case. The force of the objection is entirely offset when it is considered that fewer inspectors are needed than if the results of the administration depended entirely on their inspections.

As worked out in the New Jersey law, this device is capable of some improvement. The immunity offered through compliance induces far the most of employers to conform to the provision. But there are many who do not trouble themselves to do so, some of them trusting in the accuracy of their own scrutiny of the papers presented to them, some of them daring to violate the law and take their chances of being caught. The action of these employers leaves a number of children working under papers that cannot be examined except by the inspectors on their visits. This creates opportunities for children under age to be employed at least until the next visit of the inspector and possibly longer through his failure to detect the error. It also detracts from the uniformity and strictness of the department's control of the use of the documentary evidence, creating a foggi-

³ *Rept. Dept. of Labor*, 1909, p. 6.

⁴ The report of 1908, p. 5, shows 19,000. Adding the 7000 issued during the last year gives the number 26,000.

ness of administration in which evasions of the law may conceal themselves. This would be corrected by making it mandatory instead of optional upon employers to observe this provision of the law. The offer of immunity through compliance does not appeal to employers such as those mentioned. The risk of a penalty for failure to comply would afford a motive to those who now feel no need of the immunity, because of their confidence in their own carefulness, and would add to the risks tending to check the lawless.

Another improvement would require employers to forward to the department, not copies of the papers filed with them, but the original papers. That would give the department opportunity to detect at once alterations of birth dates or other data which would not be revealed in a copy made according to the changed face of the document. A great many employers now send the original documents instead of copies. But they are not required by the law to do so.

Another improvement might be made in the present law by *requiring* employers to keep on file the prescribed papers for every child under sixteen years. This may have been the intention when the bill was drawn, but the wording of the law, as has been seen, leaves the matter really optional, with a promise of immunity for those who do so and also send copies to the department at Trenton.⁵ To make this keeping of a registry man-

⁵The writer found that the general understanding was that such a file was required for all children. That was his own understanding also on first reading the law. But some employers had been advised by counsel that the provision was not mandatory. This fact has been recognized by the commissioner of labor, who has always tactfully avoided pushing the matter to an issue in any case while endeavoring to get employers to observe the provision in the law. This view has been affirmed in an opinion from

datory would add nothing to the burdens or risks of the well-disposed and law-abiding employers, and would assist greatly in checking the lapses of the indifferent and lawless.

The present provisions for establishing the age of any child are criticised in no respect more sharply than in the burdens which they are said to impose upon parents and employers. It is said that the sort of proof of age required by the law cannot be supplied generally by parents, especially in the case of foreign born children. These frequently have lost their passports. Many native born children neither come from communities which keep a registry of births nor have been baptized. A view of all the facts, however, shows this burden to be far less than supposed. In the case of foreign born children who have lost their passports, it is a matter of seldom more than a month to write to the native country and secure a certificate of birth. The number of children from countries where births are not registered is negligible. The burden here is thus not more than a month's delay. The difficulty is really greater for native born children; for the public registry of births is much less practiced in the United States. New Jersey has long required such a registry, but it has not been kept with uniform accuracy and continuity throughout the state. But the law provides for all these cases. When the commissioner of labor is satisfied that the specified proof cannot be furnished, he is authorized to consider *any other evidence whatever* that may be available and, if he deems the weight of it sufficient, he may grant a permit which with the affidavit of the parents meets the requirements of the law. There is some burden, how-

the assistant attorney-general given at the request of the commissioner of labor.

ever, in the necessary caution and delay attendant upon a properly guarded exercise of this authority. On the whole, it does not appear probable that many children actually fourteen years of age would be unable either to furnish the specified documents, or to satisfy the commissioner of labor that a permit was warranted. The experience of the department with claims of this sort strengthens that conclusion. The commissioner writes, "The department has had varied experiences in alleged cases of this character, and on the whole it has had abundant occasion to believe that in a large majority of cases which claim they cannot obtain the requisite proofs the child in question has not actually reached the age of fourteen years."⁶

⁶*Rep. Dept. of Labor*, 1906, p. 4. See also reports for 1907, p. 4, and 1908, p. 5.

Some measure of the importance of this objection may be had from the following data, supplied to the writer by Mr. Dale of the Department of Labor, giving the basis for excluding children from employment in some two hundred cases between November 1, 1907, and November 21, 1908.

1. On account chiefly of evidence from the N. J. Bur. Vit. Stat.	50
2. On account chiefly of altered papers.....	41
3. On account chiefly of failure to furnish papers when dem'nd'd	40
4. On account chiefly of evidence from church record.....	34
5. On account chiefly of evidence from school record.....	15
6. On account chiefly of evidence from parents	12
7. On account chiefly of evidence from child itself.....	6
8. On account chiefly of evidence from passport	5
9. On account chiefly of evidence from foreign Bur. Vit. Stat.	3
10. On account chiefly of evidence from attending physician....	1

Total 207

Summary

Proven to be too young (all except reasons 2 and 3)	126	or 61%
Altered papers. (Circumstantial evidence too young)..	41	or 20%
Failure to furnish papers demanded. (Indeterminate.)	40	or 19%

207 100

It appears that in 60 per cent of the cases,—all except such as

The requirements as to proof of age are said to burden employers also. If children actually fourteen years old cannot supply the necessary proof, the legitimate supply of child employees is curtailed for the manufacturers. Besides, in any case, the employer cannot pick up additional children as quickly or with the same freedom from responsibility as if some more easily available documents, such as a mere affidavit, would suffice. Again, many employers depend upon children of foreign birth or ignorant parents. These often find it necessary, in order to secure the labor of a child, to take charge of the matter of securing the needed documents. In such cases, the burden of proving the child to be fourteen is forced by circumstances upon the employer instead of the parent, where it rests legally. In an industry like the glass industry, where the supply of children is chronically short, this becomes a matter of constant irritation. So far as concerns children over fourteen, the conclusions reached above apply here also. The number of such who cannot secure either proof or a permit is probably far less than the number alleged by the critics of the law. Yet so far as concerns the greater delay in the available supply of child workers and the trouble of getting proof for children, the burden is not to be denied.

2 and 3,—the children were positively shown to be under age. In 20 per cent more,—those with altered papers,—there was strong circumstantial evidence to that effect. In only 19 per cent could the above criticism be raised at all. And of these 19 per cent it is certain that only a part were cases where the child was actually of working age. How many would be a matter of conjecture. Consider also that in 1908-9 the department issued 645 special permits to cover just such cases as those, and the amount of actual hardship on such children becomes relatively unimportant. The question in any case is whether the probable number who thus suffer is sufficient to warrant giving up the age proofs of such administrative value as those which the law requires.

Much of the opposition to the law on these grounds expressed to the writer was plainly directed in fact at the policy of restriction itself, rather than at the devices of restriction. Yet there were many of the critics who accepted the policy and approved the present age limit, but still thought the requirements as to proof were too severe. It is difficult to see, however, how they can be any less so without making the law ineffective. The only other kind of evidence anywhere found acceptable is the school records. But this is by no means universally available. It would not serve for those children who, because of a lax enforcement of the compulsory attendance law in their locality, have no adequate school record, if any at all. In such cases nothing but a resort to some evidence of the date of birth is possible. The present requirements could not, therefore, be dispensed with. The only concession admissible, in the light of experience everywhere, with a really effective law would be to recognize the school record in addition to the present acceptable evidence. But that would not change the situation in fact, for in those cases where the prescribed evidence cannot be furnished, the present law fully permits the commissioner of labor to recognize a suitable school record as sufficient warrant for issuing a permit.

The impression has been repeatedly made upon the writer by critics of the law that what was wanted was to escape altogether all annoyance and trouble from the administration of the laws. But that is impossible. If the policy of preventing the employment of children under any specified age be accepted, which most of these critics openly profess to do, then there must also be accepted whatever is necessary to make the policy effective. Experience has shown that no reliance can be placed upon the deterrent influence of penalties alone; but that some

administrative device is necessary to sift out children under the age limit. Such arrangements for sifting must bear most directly and heavily upon those who have motives to disobey the law. These are the parents and their children and the employers. If evidences of birth and, to complete the list, school records are the only instruments which experience has yet devised to do the sifting effectively, then whatever annoyance the use of these may occasion to parents and employers is inevitable. The only alternative is to abandon the policy, or to say that it will be compulsory in fact only on those who wish to observe it or are too honest to evade it.⁷

The parents and employers could be relieved of the annoyance in the use of these instruments by changing the burden of proof from them to the enforcing officers. But this, also, experience has shown to be fatal to an effective policy. It is far less possible to prevent the employment of children under the prescribed age by discharging those shown to be too young than by admitting only those shown to be old enough. The only justification for changing the burden of proof would be that too many children actually fourteen are shut out from employment because they cannot prove their age. The number of these appears, as shown above⁷, to be very small, in spite of the claims to the contrary. As between sacrificing the interest of these or sacrificing the many who would otherwise slip into employment under age, the balance of justice is with the law as at present.

⁷ This is understood by employers themselves. One superintendent of a large factory employing a great many children, while remarking upon the burden of the age proofs, still welcomed them as a protection against unscrupulous competitors who would take advantage of any relaxation in the strictness of the requirements.

⁸ Page 110, note 5

Another burden upon parents is the fees for the necessary papers. A certificate of birth from the public registry of the state board of health costs one dollar. The notary's fee is usually fifty cents. Baptismal certificates are sometimes issued without charge out of consideration for the applicant, though sometimes a charge is made.⁹ This burden is unnecessarily heavy and unequal. Parents who live within accessible distance of the factory inspector can have the affidavit prepared by him free of charge, although the supplementary document may cost some fee. But not all parents have this opportunity. The state, however, cannot require notaries to accept a smaller fee. This is an additional argument, from grounds of public policy, for authorized agents to issue the affidavit. As to fees for birth certificates and baptismal certificates, the state cannot control those charged by clergymen, but it can reduce the fee for certificates from the public registry of births. It is of interest to note that the city council of Newark has provided for the issuing of birth certificates without charge to those whom the inspectors recommend as deserving such favor.

The correlation between the child labor law and the compulsory attendance law was administratively excellent until the act of 1908 changing the age for compulsory attendance. Until then, the age limit for both employment and required attendance was fourteen years. When the age is the same for both laws, the observance of each profits by the enforcement of the other. In the case of New Jersey this mutual assistance was increased by the provision requiring the commissioner of labor to

⁹ An instance was related to the writer of a priest who regularly charged a dollar for such a certificate, and issued it even when the child was under age and could not profit by it. The local inspector had to request him not to issue one unless the child was of age.