THE AUTOCRATICALLY FLEXIBLE WORKPLACE

A HISTORY OF OVERTIME REGULATION IN THE UNITED STATES

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“We Didn’t Think that the Legislature Would Be So Crazy”: Territorial Alaska’s Absolute Universal Eight-Hour Law

The Government is contented with the eight-hour law; why can’t we little people in this frontier, God-forsaken country, have it? We are here trying to make a country out of it and make a living. We don’t want very much.¹

It is my deliberate opinion, based upon a wide experience in this Territory, embracing to some extent every known condition affecting either labor or capital, that if there is a country on earth where there is a logical and reasonable demand for a shorter work day, it is Alaska. This is because of climatic conditions, which are frequently extremely unfavorable..., together with the isolation of the workingmen; and added to this is the fact that the average wage paid labor...is in most instances below that paid for the classes of work in the western and Pacific coast states.²

The eight-hour statute—prohibiting overtime work except when life or property was in imminent danger—covering all workers (including adult men and business partners) enacted by the Alaska territorial legislature in 1917 is the most radical piece of hours regulation in the history of the United States. Workers, especially miners, in this frontier society had been agitating for the eight-hour day for a number of years in the face of mine owners’ insistence on 10-hour days on the grounds that short seasons (lasting from May to October) required full use of every day. Understandably, miners were not keen on exposing themselves to punishing long days on hands and knees in damp permafrost mining operations, and expressly made the argument that such long workdays would shorten their working lives.³

¹“Hearings Before the Governor of Alaska on the Eight-Hour Law (Chapter 55, Session Laws of Alaska, 1917)” at 31 (Feb. 5-21, 1918) (statement of Jesse Rice), in Record Group 101, Box 2616, Alaska State Archives.

²Letter from Alaska Territorial Governor J. F. A. Strong to the Secretary of the Interior at 7 (Feb. 25, 1918), in Record Group 101: Territorial Governor, Series 130: General Correspondence, Box 159, File Code 156: Eight-Hour Workday Law, Alaska State Archives.

³James Foster, “Syndicalism Northern Style: The Life and Death of WFM No. 193,” 5 Alaska Journal 130-41 (Summer 1975); James Foster, “The Western Federation Comes
The gold rush of the late 1890s had made Alaska the last frontier that "attracted rugged individualists with no capital but their hands, their courage, and a winter's grubstake, to wring an independent fortune from the Territory's gravels." However, within a few years, large monopolies turned "these little men" into "sullen wage-workers...." The salmon trust, for example, "brought home to residents that corporation control meant Asiatic labor" by staffing its floating canneries anchored in the territory's harbors with Hindus, Filipinos, and Chinese. Supreme among these monopolies was the so-called Guggenmorgor or Morgan-heim syndicate.4 The Guggenheim family and the House of Morgan, the owners of this combination, as James Wickersham, Alaska's leading politician and for many years its delegate to Congress,5 explained to the House Committee on the Territories in 1913, "have thrown out their tentacles along the coast in Alaska, have secured a monopoly of our coal, copper, and transportation, and they are in control of the three principal gateways to the interior of Alaska. They control the transportation in Alaska; they control the situation with respect to railroad building in Alaska; they control the fisheries in Alaska; they control the copper of Alaska...." Not surprisingly, the Guggenheim-Morgan syndicate also "wielded tremendous influence in Washington on all matters pertaining to Alaska and its business associates in the territory were influential in local politics."7

The eight-hour day had become such a mainstream demand among the monopolies' proletarianized workers on the last frontier—the vast majority of whom were unmarried men8—that during the 1908 election campaign for congressional

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5Although Wickersham was widely held to be the Syndicate's staunchest foe, in 1906 and 1907 the Guggenheim-Morgan interests asked him to be their general counsel in Alaska; he declined because he refused to be subservient to the Guggenheims' corporation general counsel in Seattle, but when asked whether he would consider that position, he said yes. Evangeline Atwood, _Frontier Politics: Alaska's James Wickersham_ 137, 146 (1979) (not revealing why the deal was not consummated).


8In 1910, white males outnumbered white females five to one in the total population; 71 percent of white men over the age of 15 were unmarried. 3 Bureau of the Census,
delegate all candidates agreed on the need for it; similarly, during the run-up to
the elections for the first territorial legislature in 1912, party platforms also en­
dorsed an eight-hour day.9 Wickersham and his followers saw the congressional
grant of home rule as undermining the Syndicate’s political power, but others
took a jaundiced view of the legislature’s limited taxing powers and lack of con­
trol over such key industries as railroads and fishing, for which the salmon can­
neries had successfully lobbied.10 Despite its initial opposition to home rule, such
restrictions meant that the Syndicate “existed quite comfortably under territorial
government.”11

Indeed, the “Alaska syndicate came out the winner in Alaska’s first Senate”
by virtue of the election of four “corporate-oriented candidates” who could “kill
an undesirable piece of legislation” in that eight-member chamber.12 Never­
theless, miners, who together with mine owners predominated among the legis­
lators at that first legislative session in 1913,13 succeeded in enacting an eight-
hour law for employment in underground mines and smelters and related opera­
tions on the grounds that it was “injurious to health and dangerous to life and
limb.”14 The legislature also enacted an eight-hour law that year for all work per­
formed by contract for the territory or any municipality; longer workdays were
permitted only “in cases of extraordinary emergency such as danger to life or
property....”15 The strong presence in Alaska of the radical Western Federation
of Miners and the Socialist Party, which inscribed the eight-hour day in its plat-

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Thirteenth Census of the United States Taken in the Year 1910: Population 1910, tab. 11 at 1139, tab. 15 at 1142 (1913). See also John Whitehead, “Dan Sutherland: Gold Rush Pioneer and Politician,” 10 (1) Alaska History 1-5 at 1 (Spr. 1995). The 1910 census counted 38,350 occupied males and only 1,723 occupied females over the age of ten; in 1920 the corresponding figures were 24,712 and 2,085. Only 12 female miners were returned at the 1910 census compared to 11,372 men; in 1920, the figures were 20 and 5,287. 4 Bureau of the Census, Fourteenth Census of the United States Taken in the Year 1920: Population; 1920: Occupations, tab. 2 at 1262 (1923).


12Atwood, Frontier Politics at 267.


141913 Alaska Sess. Laws ch. 29, § 1 at 35, 36. The statute included an exception for emergencies, urgent necessity, and days on which shift changes were made; it did not include within the eight hours travel to or from the face. Id. § 2 at 36.

151913 Alaska Sess. Laws ch. 7, § 2 at 8.
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form in 1912, may have helped drive the legislation forward.16

The territorial governor’s message to the second session of the legislature in 1915—which, as the result of the departure of most of the corporate-oriented senators, Wickersham “could control”17—recommended extension of the eight-hour law to placer mines. Governor John Strong, himself a former Alaskan miner,18 justified his view by reference to the general experience “that a man who works eight hours a day will do as much work as he who works ten hours, and he will probably do it better.”19 Contentious debate saw both a repetition of the mine employers’ argument that shorter hours were incompatible with a short season and a testimonial by at least one of the legislators who had been a miner of his experience of spending 10 hours in the muck and mud.20 Finally, the legislature amended the 1913 eight-hour law to include underground placer mining.21

Concurrently with this debate over miners the legislature was also considering a more general eight-hour law. The first such bill was timid: it would have limited the workweek in laundries to 48 hours and conferred the eight-hour day on female workers in hotels, restaurants, bakeries, and telephone and telegraph exchanges.22 The House of Representatives then recommitted the bill to the Labor, Capital, and Immigration Committee, instructing it to include all industries.23 Just two days before the session was to end, the press reported that absent some unforeseen event, the House would pass a universal eight-hour bill,24 but the

17Atwood, Frontier Politics at 286-87.
18Gruening, The State of Alaska at 166.
211915 Alaska Sess. Laws ch. 6 at 6.
22“Several Cases of Employment Affected,” Alaska Daily Empire, Mar. 11, 1915, at 1:3.
23“Hanging Abolished; 8-Hour Day for All Industries Favored,” Alaska Daily Empire, Apr. 21, 1915, at 1:1.
24“General 8-Hour Bill May Pass,” Alaska Daily Empire, Apr. 27, 1915, at 3:5. In the very next column to this report the main newspaper of the capital, Juneau, printed a restaurant advertisement dressed up like a news article which mocked the proposed eight-hour law: A pro-eight-hour legislator is arrested by the sheriff for working his servants overtime whom he had sent to take his sick mother-in-law to the doctor; when the dog sled breaks down, they have to work more than eight hours, but the mother-in-law is nevertheless stranded in the blizzard. “Legislative Doings,” Alaska Daily Empire, Apr. 27, 1915, at 3:4.
next day the House defeated the bill 9 to 6.\textsuperscript{25}

On the last day of the session, the legislature—which, the president of the Senate stated three years later, "decided that it did not wish to assume the responsibility of enacting so important a measure without first submitting the question...to the people"\textsuperscript{26}—ordered that the question as to whether the electorate favored a general eight-hour day for "all wage earners and salary earners" in Alaska be submitted to the electors at the next general election. If they voted in favor of the eight-hour day, the next session of the legislature was required to enact implementing legislation.\textsuperscript{27} Thus although the scope of the law was uniquely universal in covering adult males and all industries, it did not propose to include non-wage or salary earners such as profit-taking business owners. The wording of the legislative proposal, as employers would point out two years later, also failed to specify whether "eight-hour day" meant an absolute ban on overtime work or merely imposed a penalty wage premium. However, since the first two legislatures, to the accompaniment of considerable publicity, had just enacted two eight-hour laws for miners permitting no overtime work, there would have been little reason to assume that the proposed general eight-hour statute was to be a mere overtime law.

Workers and labor unions displayed considerable enthusiasm for the referendum. Even the Nome local of the Western Federation of Miners, whose \textit{Industrial Worker} took a jaundiced view of capitalist political institutions,\textsuperscript{28} carried a streamer at the top of the front page during the run-up to the election urging workers to vote Yes. For these socialists, an eight-hour law "means more leisure for the worker; it means more rest and more time to fit oneself for the struggle for existence, so that we may learn to work and act that this existence will be no longer a struggle...." The industrial democracy to which the organization aspired would "not be hastened by keeping men and women with their noses to the grindstone, so that they know little of actual happenings, less of themselves...."\textsuperscript{29} The day before the election, the paper, while bemoaning that non-workers, who tended to accept employers' viewpoint, were entitled to vote, conceded that some employers had recognized that shorter hours were "a business proposition because they got more out of the workers." But the \textit{Industrial Worker} added that workers had their own reasons for wanting the shorter workday, including the

\begin{footnotes}
\item[25]"Universal 8-Hour Bill Lost," \textit{Alaska Daily Empire}, Apr. 28, 1915, at 1:3.
\item[26]"Argument and Statement of Senator O. P. Hubbard," in "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 224-28 at 227 (Feb. 20, 1918).
\item[27]1915 Alaska Sess. Laws ch. 58 at 109-10.
\item[29]"Vote 'Yes,'" \textit{Daily Nome Industrial Worker}, Nov. 1, 1916, at 2, col. 1.
\end{footnotes}
resulting reduction in unemployment and competition.30

Interest in the referendum was intensified when, just two weeks before the election, the district court for the Fourth Judicial Division sitting in Fairbanks, on formal-technical grounds barely comprehensible to non-lawyers, invalidated the 1915 act that had amended the 1913 eight-hour law for miners to cover underground placer mining.31 The case arose when, at the request of the United States, a grand jury indicted Sylvester Howell and Jennie Cleveland in July 1916 for having employed a worker in April for ten hours per day in underground placer mining workings in the absence of any imminent danger to life or property. In their defense, the employers raised the constitutional claim that the act was void as special legislation (presumably because it applied only to mining), but the court chose not to reach this issue. Instead, the judge accepted the defendants' argument that the title and body of the 1913 act limited its scope to lode mining, and, since the title of the 1915 amendment failed to extend the scope of the act, it was not germane to the act's subject matter other than lode mining, and therefore placer mining had never been validly subject to the law.32

Despite sustaining the employers' position, the judge, Charles Bunnell, who would play an even more prominent part in the struggle over the general eight-hour law in 1918, stressed that it was only with "the greatest reluctance" that courts invalidated laws enacted to protect workers engaged in hazardous occupations. Nevertheless, they were "compelled" to do so because of the legislature's failure to formulate the title of the 1915 amendment to expand the scope of the law.33 Two years later, in a speech during his congressional delegate campaign, Wickersham, who himself had for years been the district judge sitting in Fairbanks, called Bunnell's decision "the silliest rot he had ever read in a judicial decision."34

Public interest in the eight-hour law was signaled by the fact that on the same day that Bunnell read his decision aloud in court, the Fairbanks Daily News-Miner, under a screaming banner headline, "8-Hour Law Unconstitutional," reprinted virtually the entire text. In a somewhat smaller font, the newspaper added the more colorful sub-headline: "Not Worth the Paper It's Written On." In case readers failed to turn to the inside pages, the editors helpfully summarized the

33 United States v. Howell, 5 Alaska at 582.
day’s editorial at the top of the article in large bolded type: “After Balling Upp [sic] Mineowners and Mineworkers Alike for a Year and Making Nothing But Trouble, Submitted to the Courts It Is Discovered That Alaska’s 8-Hour Law Was Never a Law In Fact and Never Binding Upon Anybody Unless They Thought So.” Beyond expressing its glee about the law’s demise, the newspaper astutely observed that the decision was of “the greatest importance” not just to the litigants, but to “the whole Territory, as it is likely that similar decisions will be rendered by other courts in the other divisions, if the matter ever comes up there.”35 (Curiously, two years later, in the aftermath of Bunnell’s decision striking down an eight-hour law, almost none of its supporters raised the converse question—whether it was still valid in Alaska’s other three judicial divisions.) Without offering any supporting examples, the News-Miner editorialized that the statute had proved “an undesirable restriction upon laboring man and employer...resulting in an entire season’s loss and annoyance to all of them....”36

Despite telegraph and telephone, news of the ruling moved slowly across the tundra. A whole month elapsed before the main newspaper down in Anchorage printed long excerpts from the decision,37 and six weeks before the Industrial Worker out in remote Nome could discharge its anti-capitalist bile. Throwing up its hands, the paper charged that it was no use a layman discussing the relative merits of a judicial decision. These later [sic] day judges have a theologian of the middle ages...beaten a city block when it comes to splitting hairs, and the only interesting feature...is that the successful hair splitting on the bench is generally performed when some labor law is to be thrown out. ...

These decisions like Bunnell’s, these foolishly drawn up laws which the Bunnells tear up so easily, serve to show the worker that such scraps of paper are just scraps of paper and no more, when the economic power behind the legislators and the judges will have them so act. But when a labor organization, exerting its economic might and through the legislation enacted in the Union Hall, passes its eight hour law, there is a cast iron code that all the judges from hell to breakfast cannot tear with their long lean claws, try they ever so hard.38

Despite, or perhaps because of, Bunnell’s ruling, more than 85 percent of voters in the referendum, led by the miners, favored the proposition at the general election in November 1916.39 The following March, Governor Strong, in his

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39The vote was 10,416 in favor and 1,782 opposed. “Complete Returns of November
message to the legislature at the beginning of its third session, reminded its members to “give careful consideration to this important matter, and to take such action as will carry out the expressed mandate of the people.”

II

The legislature did consider the matter, but not with the alacrity that the socialist Industrial Worker thought appropriate in light of the fact that the minority in the referendum “was so small that one could almost say the eight hour day demand was unanimous....” A steady stream of mockery about the “Solons” and how they “shirk eight hour day” appeared in the paper for weeks. But the bill that the Senate began considering in March was identical to the one that labor organizations had sought to introduce, and even the cynical Industrial Worker gave little chance of passage to an amendment to exempt the all-important fish canneries, whose association telegraphed the legislature urging exemption on the grounds of “absolute necessity for safety of the country” of salmon production during World War I, which the United States had just entered.

During the legislative debate dire predictions were made of “the great calamity that would result” especially with respect to the cannery interests and curtailing of the nation’s food supply.

Patriotism, however, was not the fishing industry’s real motivation. Rather, the canneries were impelled by the need to ward off interference with their practice of requiring employees to work extraordinarily long hours. Just a few months before the legislative debates, William Kirk, the general secretary of United Charities of Rochester, had published an article in Survey exposing these
patterns. At one salmon cannery he met a 10-year-old boy whose job was "to watch an interminable row of cans as they passed him on a traveling belt. Every minute or so he would take out a bent can. For 10 cents an hour, and usually for ten hours a day, and six days a week, he had his eyes fixed on the can chute. Sometimes, he said, he worked ten and a half hours a day and sometimes as many as thirteen." At another cannery, children 10 to 12 years old were working from seven in the morning until six and often nine in the evening, including Sundays.46 Often men and boys worked seven days a week, 14 or 14 and a half hours daily. A group of Hawaiian workers were paid a fixed $180 for the season to work seven days a week, 11 hours a day, with overtime (work after 6 p.m.) paid at 15 cents an hour. The canneries were especially partial toward Chinese workers: "they are industrious and tractable. They have such a low standard of living that they are willing to work excessively long hours without grumbling...."47 Better even than Chinese workers, however, was machinery that did the work of 20 workers disassembling salmon by hand; the machine was known as the "iron Chink."48

Salmon cannery owners, however, did not need to rely solely on their own telegrams: they were influential enough to secure intervention by higher power-holders. In the midst of the legislative deliberations, Territorial Governor Strong transmitted to the legislators a telegram that he had received from Interior Secretary Franklin K. Lane—who had jurisdiction over Alaska—requesting, on behalf of the salmon packing industry, inclusion in the law of a clause authorizing waiver of the eight-hour provision by the governor if a national emergency were declared by the interior secretary or the Council of National Defense.49 The Council, which was established by Congress in 1916 to coordinate resources, consisted of several cabinet secretaries and worked through a huge network of state and local organizations; it asked all state legislatures to delegate to the

46William Kirk, "Labor Forces of the Alaska Coast," 36(14) Survey 351-57 at 351 (July 1, 1916). Alaska's child labor law applied only to mining, but after a 1919 federal child labor tax law had been interpreted as applying to canneries in Alaska, the territorial labor commissioner recommended that "steps be taken to free native Alaskan children from the operation of this act." Biennial Report of the Labor Commissioner for Alaska, 1919-1920, at 4 (1921), in Record Group 101, Ser. 130, Box 196, File 52 Reports, Folder 196-3, Alaska State Archives. Such steps were presumably unnecessary since the U.S. Supreme Court struck the law down as unconstitutional. Bailey v. Drexel Furniture Co., 259 U.S. 20 (1922).

47Kirk, "Labor Forces of the Alaska Coast" at 352-53. Cannery employers also used a labor contractor system in an effort to rid themselves of any liability for wages; the largely Chinese crew leaders often failed to pay the workers. Id. at 352, 356-57.

48Salin, Die wirtschaftliche Entwicklung von Alaska at 37.

governors the power to suspend or modify state labor laws during the war when
the Council requested such suspension or modification. The local councils of
defense in Alaska, whose members were commonly "leading citizens of the
community" associated with fishing or mining, sought to combine their call for
longer workdays with combating the influence of the International Workers of the
World in those industries. Two days after receiving Lane’s telegram, the Alaska
House of Representatives added the suspension provision to the bill. Even on
the eve of final passage, the Nome newspaper of the Western Federation of
Miners pilloried the senators for “pulling off a good josh on their constituents”
by considering yet another referendum despite the more than ten to one majority
in the original referendum: “Anything to avert this labor legislation in the interest
of the higher-ups.” A few days later the Senate did pass a bill providing for an
expression of voter opinion on whether the general eight-hour law for all wage
and salary earners should be amended to exclude industries operating only during
the short summer seasons, such as placer mines, canneries, and agriculture (as
well as clerks), but the House did not concur.

The legislature, however, did act. First, after the Alaska attorney general had
filed an opinion with the House that the legislature’s power to limit miners’ hours
was “no longer a mooted question,” the legislature enacted a new special eight-
hour law for miners not vulnerable to the defects that had prompted Judge
Bunnell to strike down the 1915 act. Then the legislators, by a vote of 6-0 in the
Senate and 14-2 in the House, enacted an unprecedented universal absolute

of National Defense for the Fiscal Year Ended June 30, 1917, at 76 (1917); Paul Murphy,
51 John Stewart, “The Alaskan Home Front During World War I” at 5, 7, 16-17, 21
(quote) (unpublished paper presented at Conf. on Military History, Anchorage, Nov. 2-3,
1984).
52 The Journal of the House of Representatives of the Third Legislative Assembly of the
Territory of Alaska at 146.
53 “Senate Joshers Want to Refer Eight Hour Again,” Daily Nome Industrial Worker,
Apr. 26, 1917, at 4, col. 2 (the 10 to 1 figure was incorrect).
54 “Session of Alaska Legislature Ends Thursday,” Anchorage Daily Times, May 2,
1917, at 1, col. 2; The Senate Journal of the Third Legislative Assembly of the Territory
of Alaska 143, 211 (1917) (Senate Bill No. 75); The Journal of the House of
Representatives of the Third Legislative Assembly of the Territory of Alaska at 315.
55 Biennial Report of the Attorney General of the Territory of Alaska for the Period
March 1, 1917, to March 1, 1919 at 57, 58 (1919) (Mar. 24, 1917). See also “Grigsby’s
Opinion on 8-Hour Bill,” Anchorage Daily Times, Apr. 5, 1917, at 2, col. 2
56 1917 Alaska Sess. Laws ch. 4 at 3.
57 The Senate Journal of the Third Legislative Assembly of the Territory of Alaska at
117; The Journal of the House of Representatives of the Third Legislative Assembly of the
Territory of Alaska at 183.
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eight-hour law. In the House, the bill had been introduced by Philip Corrigan, the chairman of the Committee on Labor, Capital, and Immigration, and a former miner, socialist, and president of Nome Local 240 of the Western Federation of Miners; in the Senate, another former miner, Swedish-born John Sundback, filed the bill.\(^*\) After being informed by the Attorney General that such a bill would not affect the general eight-hour law, the House passed an eight-hour law for women in numerous industries, but refused to concur in the Senate amendment to exclude "Natives or mixed blood during the salmon canning season," and the bill died.\(^{59}\)

The new law's central provision read:

That a period of employment for all wage earners, and salary earners in the Territory of Alaska shall not exceed eight hours (8) within any calendar day, except in cases when life or property is in imminent danger. Employment as herein used shall be construed as the performance of labor or services for any individual, partnership, association or corporation, whether the person performing such labor or service be a member of such partnership or association to stockholder or officer of such corporation or not.\(^{60}\)

Each day's violation constituted a separate misdemeanor and was punishable by a fine of $100 to $500 and/or 60 days' to six months' imprisonment. Finally, the statute included the provision that the interior secretary had urged empowering the governor to suspend or modify the operation of the law, at the request of the interior secretary or Council of National Defense, during World War I.\(^{61}\)

"One of the most discussed provisions of the law" and one that made it unique was the ban on work beyond eight hours even by business partners. The Anchorage Sunday Times, focusing on the issue of unfair intra-capitalist competition, editorialized that since the law did not impose such a ban "where a man is sole owner of his business," he "alone will have the right to work as long as he wishes, while the one which is owned by two partners, even though both are not...


\(^{60}\) 1917 Alaska Sess. Laws, ch. 55, § 1, at 116.

there, will be unable to work more than eight hours."\(^{62}\) Despite almost unanimous votes in both chambers on final enactment, this particular provision was subject to considerable controversy.\(^{63}\) The Committee of the Whole of the House had recommended adoption of a proviso "that the period of employment prescribed by this Act shall not apply to Superintendents, Managers, Bosses, Foremen, or other executives of any partnership, association or corporations when acting as such." After the House struck "Bosses," it did adopt this amendment, but the Senate did not agree to it. A further motion in the House to strike the language imposing coverage on partners and corporate officers failed by a vote of 4-12.\(^{64}\) That even the senators were plagued by some doubts as to the bill's constitutionality was signaled by their having voted twice to defer consideration of it until they received the attorney general's opinion.\(^{65}\)

III

Notably, employers undertook no public campaign to persuade Congress to exercise its power to repeal the eight-hour law.\(^{66}\) Their low profile during the legislative debates may not have been irrational. First of all, firms, and especially canneries, may have been relying on the suspension mechanism during the war years. Second, the other large employing industry, mining, was already largely subject to a special eight-hour law. The new law did apply for the first time to surface placer mining and dredges, but the number of newly covered workers was "small as compared with the other mining industries."\(^{67}\) And finally, some employers may have assumed that a judge sympathetic to their interests might de-

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\(^{63}\)Legislative history analysis is, unfortunately, impeded by the fact that not all of the bills and amendments from the 1913, 1915, or 1917 legislative sessions have survived. Telephone interview with Judy Skagerberg, Alaska State Archives, Juneau (March 2000).

\(^{64}\)The Journal of the House of Representatives of the Third Legislative Assembly of the Territory of Alaska at 170-71 (House Bill No. 28); The Senate Journal of the Third Legislative Assembly of the Territory of Alaska at 183, 196, 222. The House acted in the same vein when it voted to narrow the scope of coverage by substituting "all wage earners and salary earners" for "all labor or services." This language was enacted, but a further House proviso "that this Act shall not be construed to prohibit extra hours of employment necessitated by a change of shift" was not. The Journal of the House of Representatives of the Third Legislative Assembly of the Territory of Alaska at 170.

\(^{65}\)The Senate Journal of the Third Legislative Assembly of the Territory of Alaska at 81, 108 (Senate Bill No 13).

\(^{66}\)In establishing a territorial legislature in Alaska, Congress reserved to itself the right to disapprove any statutes enacted there. Act of Aug. 24, 1912, ch. 387, § 20, 37 Stat. 512, 518.

\(^{67}\)Report of the Territorial Mine Inspector to the Governor of Alaska for the Year 1917, at 11-12 (1918).
clare the law unconstitutional.

The first possibility was highlighted in the governor’s annual report for 1917, which reminded the interior secretary that the governor was authorized to suspend the law if the secretary requested him to do so.\textsuperscript{68} Predictably, as January 1, 1918, the effective date of the law, approached, employers began urging the authorities to make use of this mechanism. On December 4, the Interior Department wired Strong that a lumber mill company in Wrangell had petitioned the secretary to suspend the law “alleging enforcement will necessitate discontinuance [sic] of business....” The department instructed the governor to “take up matter with company, ascertain facts and submit your recommendation on application.”\textsuperscript{69}

Three days later, Newton Baker, the Secretary of War and chairman of the Council of National Defense, requested that Strong suspend the law as to the salmon industry for the duration of the war. Enforcement of the eight-hour law, according to Baker, “would either materially increase the cost or decrease the output of canned salmon, a most essential article of diet of our army our navy our civilian population and our allies....”\textsuperscript{70} The pressure on the governor mounted three days later when he received an almost identical telegram from Interior Secretary Lane, who added that Herbert Hoover of the U.S. Food Administration concurred in the request.\textsuperscript{71}

On December 15, 1917, Strong issued a proclamation suspending the eight-hour law not only as to the salmon fisheries and canneries, as Baker and Lane had requested, but also to “any manufacturing industry...whose products are necessary to the proper preparation of salmon as a food supply....”\textsuperscript{72} After this first suspension, the governor seized the initiative two weeks later, recommending that Lane request him to suspend the law as to taking, preparing, and curing all other kinds of food fish.\textsuperscript{73} Lane took a week to reply to Strong’s telegram, stating merely that he had “no request [for] suspension” regarding those industries, but asking for

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\item \textsuperscript{69}From Meyer Asst. to the Secretary to Governor Strong, Dec. 4, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives.
\item \textsuperscript{70}Telegram from Newton D. Baker to Hon J F Strong Governor of Alaska, Dec. 7, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives.
\item \textsuperscript{71}Telegram from Secretary Lane to Governor Strong, Dec. 10, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives.
\item \textsuperscript{72}Territory of Alaska, Executive Dept., A Proclamation, Dec. 15, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives. See also “Eight-Hour Act Will Not Apply to Fisheries,” Anchorage Daily Times, Dec. 13, 1917, at 1, col. 1.
\item \textsuperscript{73}Telegram from Governor Strong to Secretary Interior, Dec. 28, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives.
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Strong's view regarding suspension of the law in mining.\textsuperscript{74} One possible reason for the alacrity with which Strong complied with Lane's requests was the governor's knowledge that Alaska Democrats at that very moment were lobbying the Wilson administration not to reappoint him in 1918 because he had failed to side with the Democratic candidate in the aftermath of the contested election for congressional delegate against Wickersham.\textsuperscript{75}

Nevertheless, and expressly legitimizing his action by reference to Lane's "request," the governor on January 7, 1918, issued an executive order suspending the law as to the rest of the fishing industry.\textsuperscript{76} Two days later Strong, however, answered a telegram from Lane\textsuperscript{77} to the effect that no exception should be granted one of Alaska's railroads because he believed that the eight-hour law's emergency provision covered longer hours caused by winter weather and that therefore "no prosecution would follow."\textsuperscript{78}

Not until December 21, 1917, did Strong reply to Lane's telegram of December 4 concerning the lumber mill. In his five-page letter the governor defended his action regarding the salmon industry on the grounds that, as a seasonal business, it would experience lower output if subject to the eight-hour law. After conceding that labor was scarce throughout Alaska—a finding that he would negate just two months later—he nevertheless opposed suspension in mining, but admitted that if the lumber manufacturing industry's claims were true, "it probably would be advisable to suspend the operation of the 8-hour law" as to it as well as to logging. After offering this specific advice, Strong veered off into a sermon about the patriotic demands of self-denial and self-sacrifice that applied to the "employer and capitalist" as much as to the workman.\textsuperscript{79}

In December 1917 and January 1918 the governor was bombarded with telegrams from capital and labor. The Ketchikan Power Company was perhaps most vigorous in not only requesting total suspension during the war, but also

\textsuperscript{74}Telegram from Secretary Lane to Governor Strong, Jan. 5, 1917 [sic; should be 1918], in Record Group 101, File Code 156, Box 159, Alaska State Archives. This curious exchange would be clarified if the telegram contained a typo: Lane's phrase, "I have no request suspension," should perhaps have read, "I have to request suspension."


\textsuperscript{76}Territory of Alaska, Governor's Office, Executive Order, Jan. 7, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.

\textsuperscript{77}Telegram from Secretary Lane to Gov. Strong, Jan. 9, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.

\textsuperscript{78}Telegram from Governor Strong to Secretary Interior, Jan. 9, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.

\textsuperscript{79}Letter from Governor to Secretary of the Interior, Dec. 21, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives. Strong did not explain how seasonality was relevant if canneries could operate on two or three shifts.
"feeling] this is an unjust law for Alaska and should never have been placed on the records."80 Workers, in contrast, were concerned about enforcement of the new eight-hour law: as early as December 3, 1917, the Alaska Labor Union wired Strong that 2,000 members had unanimously passed a resolution demanding that the statute not be rescinded.81 Governor Strong, mindful of union opinion and that the legislature had unanimously passed a law strongly approved by the people in a referendum, decided not to heed the call by the Anchorage Chamber of Commerce for suspension of the law altogether during the war.82 Nevertheless, the future of the eight-hour law became dimmer on New Year's Day 1918, when Interior Secretary Lane telegraphed Strong that the Anchorage Chamber of Commerce and the Cordova Council of Defense had requested general suspension and asked the governor to "wire me your views as to whether or not necessity exist [sic] for such action."83 Strong's negative reply the following day was firm: "[I]t is my opinion that no necessity exists for general suspension.... This office has received but few requests for such action, and many against it. Labor organization protests have been especially numerous."84 Strong's personal views about the law may have been accurately reflected in his assurance to a private correspondent in early January that it was his "honest conviction that nothing would be gained by the general suspension of the law, and that includes the mining industry of the Territory. A general 8-hour law is being adopted all over the country, and the people of the Territory might just as well make up their minds that the day of the 8 hours has come and is here to stay." He buttressed this belief by reference to his own observations in the printing and newspaper business (he had been editor of the Nome Nugget and Alaska Daily Empire), which had taught him that printers became physically exhausted by ten hours of work and that they could do as much work and more cheerfully in eight hours.85 To be sure, Strong's optimism may have been the result of his lack of

80Telegram from Ketchikan Power Co. to Major Strong, Governor of Alaska, Dec. 15, 1917, in Record Group 101, File Code 156, Box 152, Alaska State Archives
83Telegram from Franklin K. Lane to Hon. J F A Strong, Jan. 1, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
84Telegram from Strong, Governor to Secretary Interior, Jan. 2, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
85Letter from Governor Strong to Dr. Aline Bradley (Jan. 9, 1918), in J. F. A. Strong Papers, Box 1 Folder 25, Alaska and Polar Regions Archives, Rasmuson Library,
familiarity with details of the various laws; in any event, contrary to his view, the absolute eight-hour day for adult males (including business partners) with no provision for overtime work had not yet come. Indeed, more than 80 years later it had still not arrived.

To some employers or local branches of the Territorial Council of Defense requesting a general suspension of the eight-hour law Strong sent pro forma replies in January 1918, stating merely that under the statute his authority to suspend could be triggered only by a request from the secretary of the interior or the Council of National Defense. To others he offered substantive reasons, stressing that during the campaign from 1915 to 1917 "no public speakers or the press of the Territory [had] discussed the merits of this referendum, neither did they protest against the passage of the law by the legislature."87

In the meantime, one of the initial consequences of the eight-hour law was the decision by stores in Anchorage to close at 6 p.m., a proposal that the socialist Alaska Labor News had made a year earlier on the grounds that Anchorage—which originated in 1915 as a tent settlement for workers building the Alaska railway—had already passed through its founding years when late-night hours were a necessity, but "hard on the clerks, hard on the business men."89 The Anchorage Sunday Timeseditorially welcomed this early closing as a "condition which long ago should have been in existence" since most workers in Anchorage left work at 4:30 or 5 p.m. so that shopping could be completed by 6 p.m.90

The new law was also sufficiently talked about to become the subject of everyday humor. Under the headline, "Harmony Actor Does Not Heed Eight-Hour Law," one paper reported that "[a]nybody...depressed over the fact that the law prevents more than eight hours' work in one day, should go" see a new funny film where he would have to "put in overtime laughing."91

On January 10, Lane returned to the issue of the lumber industry and Strong's letter of Dec. 21, this time requesting further investigation and a definite recom-
mendation concerning the company’s claim that it was unable to supply spruce for airplanes.92 A week later Strong replied, tacitly reversing himself, now advising against suspension because he was convinced that Alaska mills did not manufacture lumber suitable for airplanes.93 Despite his resistance to further suspensions, employers’ demands for a free hand with regard to the length of the workday became more intense. On January 15, the Guggenheim Kennecott Copper Corporation, “the greatest copper trust in the world”94—which the previous summer had accomplished the difficult task of breaking a strike by recruiting miners in Alaska in the midst of an alleged labor shortage95—stressing the interest of the United States Government in its output, wired Strong that in the “present National emergency it does not seem advisable that our plant should be subject to a sixteen hour shutdown and production stopped simply because mechanics...are not allowed by law to work even an hour overtime....”96 The copper trust’s influence was magnified during World War I during which production in Alaska recorded huge increases and far surpassed gold mining in value.97 Two days later, the manager of a large mining company sought to sway the governor by charging that only “certain of the unions or socialistic class” opposed the nationwide movement to suspend eight-hour laws for non-underground mining operations, while “all real Americans, whether laborers or otherwise” supported it.98 Then on the January 19, Interior Secretary Lane wired Strong, again conveying requests to suspend the law as to railroads and steamships based on claims of labor shortages and prohibitive increases in operating expenses.99

This flood of messages culminated in Lane’s telegram of January 23, in-

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92Telegram from Secretary Lane to Gov. Strong, Jan. 10, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
93Telegram from Governor Strong to Secretary Interior, Jan. 19, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
94The Building of Railroads in Alaska at 407 (testimony of James Wickersham, Alaskan Delegate to Congress).
95Report of the Territorial Mine Inspector to the Governor of Alaska for the Year 1917 at 77-78 (n.d. [1922]); Report of the Territorial Mine Inspector to the Governor of Alaska for the Year 1921 at 10-11.
96Telegram from E. T. Stannard, manager, to Governor Strong, Jan. 15, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
97The value of copper produced in Alaska rose from $2.8 million in 1914 to $29.4 million in 1916, declining to $24.4 million in 1917 as a result of “labor troubles at the Kennecott-Bonanza mine.” The value of gold production held steady in the range of $16-17 million. Annual Report of the Territorial Mine Inspector to the Governor of Alaska: 1921, at 77-78 (n.d. [1922]); Report of the Territorial Mine Inspector to the Governor of Alaska for the Year 1917 at 6 (quote).
98Letter from B. L. Thane (Alaska Gastineau Mining Co.) to Hon. J. F. A. Strong, Jan. 17, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
99Telegram from Franklin K Lane Secy to Governor Strong, Jan. 19, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
forming the governor that the Council of National Defense had advised the states that no action should be taken on requests to suspend their eight-hour laws until the governor had held a hearing and concluded that suspension was advisable. Lane therefore instructed Strong to hold hearings on the petitions from the lumber manufacturing, logging, railroad, steamship, and mining industries, to send him and the Council a brief summary of the facts and his advice.\textsuperscript{100}

\section{IV}

The next day Governor Strong announced that beginning February 5 he would hold public hearings on petitions by those named industries for suspension of the law as to them and authorization to work employees more than eight hours for extra compensation. The announcement sparked mass labor meetings in January and February in support of the new law.\textsuperscript{101} Unions sought to refute claims by operators of copper mines, logging camps, and lumber mills that an alleged scarcity of workers would make it impossible to meet war production needs by arguing that it was "common knowledge" that all the requisite skilled and unskilled workers would be forthcoming if employers paid fair wages for an eight-hour day.\textsuperscript{102} They also observed that double shifts would take care of any labor shortage resulting from an eight-hour shift.\textsuperscript{103} In contrast, local councils of defense urged the governor to suspend the law entirely; the council in Ketchikan, for example, asserted that carpenters, machinists, electricians, loggers, and others "must be available at all hours to make up" for the impossibility of increasing the number of workers caused by the labor shortage.\textsuperscript{104} Thousands attended mass meetings under the auspices of the Alaska Labor

\textsuperscript{100}Telegram from Lane to Hon J F A Strong, Jan. 23, 1919, in Record Group 101, File Code 156, Box 159, Alaska State Archives.

\textsuperscript{101}Governor Strong to All Concerned, Jan. 24, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives; "Hearing to Be Held on 8-Hour Law," \textit{Alaska Daily Empire}, Jan. 25, 1918, at 5, col. 5; "Mass Meeting Will Discuss Eight Hour Act," \textit{Anchorage Daily Times}, Jan. 29, 1918, at 2, col. 2; "Mass Meeting Opposes Change in Labor Law," \textit{Anchorage Daily Times}, Jan. 30, 1918, at 1, col. 5; "Pertaining to the Eight Hour Law," \textit{Daily Nome Industrial Worker}, Feb. 2, 1918, at 1, col. 1; "Mass Meeting Is in Favor of Eight Hour Day," \textit{Anchorage Daily Times}, Feb. 7, 1918, at 3, col. 2; Eight Hour Law Hearing Fixed on February 15,\textsuperscript{102} \textit{Anchorage Sunday Times}, Feb. 10, 1918, at 1, col. 2.

\textsuperscript{102}"Mass Meeting Is in Favor of Eight Hour Day," \textit{Anchorage Daily Times}, Feb. 7, 1918, at 3, col. 2, 3.

\textsuperscript{103}"Labor Shortage—Eight-Hour Law," 1 (3) \textit{Alaska Labor Union Bulletin} 2 (Feb. 15, 1918).

\textsuperscript{104}Telegram from Ryus to Governor J F A Strong, Feb. 3, 1918, in Record Group 101, File Code 156, Box 159, Alaska State Archives.
Union to oppose abrogation of the law. These protest meetings captured the prevailing sentiment concerning overtime work. At one meeting in Juneau the night before the hearings began, a petition was debated including a proposal to provide workers with the option of working more than eight hours. Although the meeting had “started off like an old maids’ tea party,” the optional overtime proposal “immediately brought out a storm of protest” and it was voted down. Equally interesting was the discussion of a proposal to petition the governor to mandate time and a half for overtime work by fishermen, who, as a result of the governor’s suspension of the new law as to them, were “required to work as long as the employer deems necessary.” A representative of the fishermen, however, urged those attending not to take any action that might confuse the two issues: “‘If the workers of this and other sections will stand solidly behind the eight-hour law as it now stands, the fishermen will take other means of protecting themselves.’”

The hearings, which extended over more than two weeks, received broad coverage in the territorial press, the opening day, for example, being reported in a banner headline in the Juneau paper. Mining, fisheries, logging, and shipping employers were most heavily represented at the hearings. Much more interesting than employers’ and workers’ predictably stylized and empirically unverifiable responses to Governor Strong’s call to focus on the question of whether Alaska was suffering from a labor shortage were the class divisions on the issue of whether workers should be permitted to work overtime. Employers favored antipaternalistic arguments. Ralph Robertson, one of the territory’s leading corporate lawyers and acting as agent of several companies, asserted: “If a man wants to work overtime, he is entitled to it, but this law prohibits them from working their men over eight hours or paying them for it, no matter what pro-

106 “Action Taken Last Night at Mass Meeting,” Alaska Daily Empire, Feb. 5, 1918, at 6, col. 3-4.
108 For the list of the companies (including Kennecott Copper Co.) testifying in favor of suspension, see Letter from Governor Strong to Secretary of the Interior at 2; “Hearings Before the Governor of Alaska on the Eight-Hour Law (Chapter 55, Session Laws of Alaska): Feb. 5 to 21, 1918” [unpaginated].

110 Robertson was also a U.S. Commissioner in Juneau in 1913, territorial director of the U.S. Employment Service from 1917 to 1919, mayor of Juneau from 1920 to 1923, and president of the Juneau Chamber of Commerce, in addition to presiding over Juneau’s leading corporate law firms into the 1960s. 4 Alaska Reports viii (1914); The American Bar: A Biographical Directory of Contemporary Lawyers of the United States and Canada, at 1166 (1926).
portion of the profits they are willing to give." Moreover, employers insisted that some "men want to work overtime; they demand the right to work overtime, and they do work overtime."Ironically, in comparison with Alaska’s absolute eight-hour law, a statute that forced employers to pay premium overtime began to look appealing. According to Robertson:

If this law would permit them, like the Oregon law does, which has gone to the Supreme Court and been held valid,...to employ men for an hour or two hours or three hours and pay them overtime, double time, or one-half time, whatever is a fair basis, as agreed upon between the labor and the employer, it would be a different proposition. But this law cuts them off on the 8 hours. ... If they work their men overtime, they are violating the letter of the law, if it is only five minutes overtime, just as much as though they worked them three hours overtime; and the laboring man has no way of getting paid, or saying to the employer, "I am willing to work overtime. I realize you are at a disadvantage and I am willing to work overtime."

Other employer representatives tried a different tack. P. E. Bradley, speaking on behalf of two gold mining companies and a local council of defense, reported that all of his principals agreed that “eight hours a day was long enough for any man to work. However, they all” also felt that during the war “it would not be asking too much” to modify the law to “protect the workingman against being compelled to work more than eight hours, if he didn’t see fit,” but “at the same time giving him the privilege of working overtime in case he would like to do so and was paid for that overtime.” Herbert Faulkner, another Juneau corporate lawyer-lobbyist representing mining companies and an influential force in the Republican Party, urged permissive overtime and went so far as to assert: "There is no answer to that argument. [N]o laboring man can have any valid objection to that kind of a proposition for this reason: that if they don’t want to

111 "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 6. A typo in the transcript makes it appear as if Governor Strong made this statement, but it is clear from the context that Robertson’s name was inadvertently omitted.
112 "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 192 (Robert Capers referring to longshoremen). For hearing testimony of longshoremen who worked 36 hours without any overtime, see id. at 201 (E. E. Allen).
113 "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 8 (Robertson).
114 "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 51.
115 Faulkner, who had been a U.S. marshall in Juneau, also engaged in a long corporate law career. 3 Alaska Reports vi; The American Bar: The Professional Directory of Leading Lawyers Throughout the World 1529 (39th ed. 1957); Who’s Who in Alaskan Politics at 28-29; Atwood, Frontier Politics at 303. Faulkner and Robertson were the leading business lawyers in Juneau. Pamela Cravez, “Seizing the Frontier: Alaska’s Territorial Lawyers” 41 (MS, n.d. [1984]).
work more than eight hours, they don’t have to.”¹¹⁶ The credibility of his call for replacing mandatory labor standards with a consensual race to the bottom may, however, have been tarnished by his historically suspect claim that “the mining companies do not want to force the men to work more than eight hours. It would be a ridiculous proposition to say that they could force any man to work more than eight hours.”¹¹⁷

When one of the workers at the hearing, E. E. Tracy, tried to explain to Bradley why enforcement of labor standards could not be based on individual workers’ willpower, even Governor Strong seemed unable to grasp the point of a nonpermissive standard:

MR. TRACY: ... We know, I know that there’s lot of times I would like to work ten hours; maybe I would like to work 12 hours, but I can’t do it because the law prevents you---it keeps you away from me. I am not making any personal reflections, but I mean that the people are protected against---

GOVERNOR STRONG: Pardon me. You are opposed to the workingmen working overtime?

MR. TRACY: Yes.

GOVERNOR STRONG: Absolutely?

MR. TRACY: Absolutely. Although I agree with Mr. Bradley---I believe there’s times when it is absolutely necessary to work overtime, and then there’s times when it’s required---when it’s absolutely necessary---that some of the boys would also like to put in a couple of extra hours. I know---at least, I feel that way about it, that if I don’t work overtime, I am only causing myself a hindrance, but if I don’t want to work overtime, with the 8-hour law, then I’ve got some protection, because just the minute there is plenty of men come into the country and we get a little overabundance, the boss comes along and says, “Here, we would like to have you work a couple of hours overtime.” Well, maybe I have something special to do.... If I don’t work that two hours overtime, I roll up my blankets and get out. That’s the way it works every place I ever been.¹¹⁸

By the end of the hearings, however, Strong seemed to understand the basis of workers’ resistance when one of their representatives explained to him that while they would be willing to work ten hours or more at time and a half if it was necessary to maintain the army, “they are not willing, even at time and a half overtime, to work overtime, to work ten hours because some corporations ask for it. It would be practically establishing a ten-hour day. That’s the ground they take.”¹¹⁹

¹¹⁶“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 68.
¹¹⁷“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 72.
¹¹⁸“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 57.
¹¹⁹“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 218 (S. E. Mandle).
Even more revealing than the overtime debate, however, was the explanatory light that the testimony shed on the legislature's puzzling enactment of such a radical maximum hours law. The antagonistic colloquies between representatives of capital and pro-labor former and current state legislators finally brought to light what public debate had failed to articulate in 1916-17—namely, that participants in the legislative process had been fully aware of the radical and unique character of their universal absolute eight-hour law.

Already on the first day of the hearings an interrogation of a worker by two representatives of saw-mill, logging, fishing, steamship, and mining companies produced more understanding of the law than the previous three years of public discussion. When the worker, Jesse Rice, stated that workers were not "kicking so much about the wages, but they know they don't have to work more than 8 hours in the States and we haven't got it here," Robertson and Faulkner challenged him:

MR. ROBERTSON: In what states do they have it?
MR. RICE: I don't remember them all---Washington has an eight-hour law.
MR. FAULKNER: One like this?
MR. RICE: No---
Mr. FAULKNER: Their 8-hour law applies to hazardous occupations. Isn't that it?
MR. RICE: Well, I won't state.
MR. FAULKNER: Do you know any state where they have a general 8-hour law like this[?]
MR. RICE: No; there is no states, but the employers are giving their employees an 8-hour law.
MR. FAULKNER: Do you know of any place where they have a law like this[?]
MR. RICE: No, this law is very rigid, and it's for a good cause. The workingman doesn't need to work more than 8 hours a day. If he can't make a living in 8 hours, he might as well not live.120

Later, when Faulkner observed that the manager of a steamship company office would be violating the law if he worked more than eight hours in order to perform the work of other employees who had left and couldn't be immediately replaced, a labor representative asked him and the other employer representatives opposed to the law why they had not raised such issues before the legislature acted.121 Faulkner did not respond immediately, but shortly afterwards tried to seize the rhetorical initiative in a colloquy with the former president of the Alaska Senate, Oliver Hubbard, by suggesting that somehow the legislature had had no popular mandate to craft the statute that it did:

120"Hearings Before the Governor of Alaska on the Eight-Hour Law" at 34-35.
121"Hearings Before the Governor of Alaska on the Eight-Hour Law" at 91-92.
MR. FAULKNER: Governor, I might call your attention to this fact, that at the time
the question of a general eight-hour law was submitted to the people by the legislature,
no specifications were made as to what kind of a law it was to be and the people could not
at that time, people who voted on the law, tell what kind of a law the legislature would
pass. That is, they did not have this kind of a law in contemplation and could not have
had at the time they voted upon it.

SENATOR HUBBARD: Don’t you think that the act of 1915 settled it? The
legislature had no power to pass any law except one that conformed exactly to what the
people voted for.

MR. FAULKNER: I am referring to the question submitted to the people.

SENATOR HUBBARD: You refer to the referendum?

MR. FAULKNER: Yes; the ballot provided for or against a general eight hour law.

SENATOR HUBBARD: Well, isn’t that plain enough? It was a general eight-hour
law without any qualifications, restrictions, limitations or anything else, and the clause
which was put in at the request of the Department of the Interior and the Council of
National Defense at the time it was passed could not, in my opinion, have been put in
there by the legislature for the reason that it was not in keeping with the instructions of the
people.

MR. FAULKNER: I would also like to have this in the record: that there is not
another State in the Union that has such a law as this, and this kind of a law has never
been enacted in any other country and it has never been tested.

SENATOR HUBBARD: Well, some people or some state or territory have always
got to pass the first law of any kind.122

When Senator Hubbard sought to legitimize the general eight-hour law by
reference to the eight-hour laws for miners that the legislature had enacted in
1913 and 1915, Faulkner baited him, asking why, if labor was so sure of the law’s
validity, it did not seek a court test. (Those in Juneau demanding that their oppo-
nents arrest violators were apparently unaware that an arrest warrant had already
been issued in the Northern Commercial Company case in Fairbanks despite the
fact that a widely reported judicial hearing in the case would take place only
several days later.)123 A labor representative tried to avoid this treacherous terrain
by proposing to Faulkner that the law be left as it was until the next session of the
legislature (in 1919), at which time, “if there’s something in that law that the
workmen are radically opposed to,” it could be amended. Faulkner, in turn,

122“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 100.
123See below. Two days after the close of the governor’s hearings, Strong telegraphed
the U.S. attorney in Fairbanks asking for the status of the case. Roth wired back the same
day that after two days of constitutional argument the court said that the decision would
rendered the following week. The evening of the day the decision was handed down,
Roth wired Strong that the law had been held unconstitutional. Governor Strong to U.S.
Attorney Roth, Feb. 23, 1918; Roth to Strong, Feb. 23, 1918; Roth to Strong, Feb. 27,
1918; in Record Group 101, File Code 156, Box 152-7, Alaska State Archives.
preempted that offer (which presumably referred to permitting premium overtime work) by declaring that the law was obviously void because the legislature lacked any power to regulate the hours of labor absent some relationship to health or life: "The legislature of the Territory of Alaska nor of any other state has any right to tell me that if I want to employ a stenographer more than eight hours and I am willing to pay her for more than eight hours labor and she is willing and it doesn't interfere with her health, that they can tell me that she can't work more than eight hours." F. Harrison, the labor representative, apparently nonplussed by Faulkner's analysis, waxed sarcastic: "It is not very often that you find the best legal talent of the country talking for the workingmen."124

Senator Hubbard—who believed that it had been a "serious mistake" to suspend the law with respect to fishing because fish prices were high enough to enable employers "easily [to] meet any emergency in either wages or employees"125—was forced to reveal still more about the hidden legislative history in a colloquy with Robert Capers, the lawyer representing the Kennecott Copper Corporation and the Copper River & Northwestern Railroad. These two enterprises, together with the Alaska Steamship Company, were the key components of the Guggenheim-Morgan Alaska Syndicate. When Capers (who also represented all these companies in litigation)126 complained on behalf of the copper trust's railroad that operating conditions in Alaska required it to violate the law, Hubbard seemingly lost his patience: "Why didn't you make your kick before? ... Where were you when this matter was being submitted and where were you when the legislature was passing upon it that you didn't come down here and show the necessity for changing it? You have had your opportunity." At first Capers tried to avoid the senator's rebuke by asking him "a question or two" about the legislative history. When Hubbard insisted that at the referendum the people had voted for "a general eight-hour law for all wage and salary earners," Capers asked whether the legislature would not also have enacted a general eight-hour law if it had provided, as did the Adamson law, "that eight hours shall constitute a basis for a day's pay and that overwork shall be compensated for as overtime...." To Hubbard's lame protest that "[t]hat is not the law," Capers replied: "There isn't in the history of the United States a law like this." But when the senator insisted that the railroad and mining companies and all Alaskans knew what the law covered, Capers repeated that a "great many laws could be general

124"Hearings Before the Governor of Alaska on the Eight-Hour Law" at 100-103.
eight-hour laws.”

When Capers expressed his belief that the people had thought they were voting for an eight-hour cum premium overtime law—his only evidence being that he himself had voted for the law having “no idea whatever that the legislature would pass a law of the class that it did”—adding that any law that “says to you, or myself or to Mr. Faulkner that they shall not work overtime is invalid,” he triggered a dialog that quickly elicited from him an astounding admission concerning employers’ lobbying strategy:

SENATOR HUBBARD: Well, why didn’t make your kick before it was passed[?]  
MR. CAPERS: Well, because we didn’t think that the legislature would be so crazy as it afterwards developed to be.  
SENATOR HUBBARD: Well, that’s all right. I want to say to you on that question of craziness that the legislature had this matter under discussion for a good while...and everyone had an opportunity to come and be heard...but not a single person came before that legislature or before any committee and made any such suggestion as you are making here now[.]  
MR. CAPERS: What suggestion[?]  
SENATOR HUBBARD: That it’s not valid and that there isn’t another State that has such an eight-hour law and that we had no power to pass it, and that we should have passed a...law providing that eight hours shall constitute the basis of a day’s wage and that overtime shall be allowed and that additional time may be worked and so on. ... I want to say to you that the members of that legislature, if they had passed a different law, would not have been keeping faith with the people. That’s what I say to you, Mr. Capers, and you may think that is crazy or not crazy. We wrote a law as nearly conforming to the act of 1915 as it was possible for us to write and we passed it, and the people who are here now, claiming that it should be set aside almost a month after it...went into force...did not come here than and show any defects in it or why it ought not be passed as the people had voted it; neither did they go to the people of the Territory through their press and say to the people, “This law is inadvisable: it will not work. Do not pass it.... This isn’t the kind of law you want.” ... I say to you that no member of the legislature could have done otherwise; if any member...would have voted any differently, he would have been a traitor to the people.

Since employers regarded the eight-hour law as “crazy,” when Capers asserted that employers nourished “no particular antagonism to the general principles of eight-hour legislation,” and that “[w]e are not taking from them

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127“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 109-12.  
128“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 185.  
129“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 112.  
130“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 112-14.
[workers] the principle of the eight-hour law,"131 he manifestly meant the unprinci­pled eight-hour day extended by consensual overtime work.

Having elicited from Hubbard that he was a practicing attorney, Capers kept pressing him to explain why he had not investigated the constitutionality of the bill he had supported. The ensuing colloquy suggests that labor and capital might have known all along that the law would be held invalid:

SENATOR HUBBARD: I see. Your sarcasm is beautiful, but it isn't sound.... It wouldn't have made any difference, Mr. Capers, if I looked into it thoroughly. ... I suppose you think I should have look[ed] it up like a professional lawyer and come down here and sa[id] to the members of the legislature: "Boys, I have looked this thing up. It's not valid; it's not legal. We can disrespect the people and their votes and cast it aside, because I'm a lawyer, I'm a great lawyer, and I have looked it up and it isn't valid.""

MR. CAPERS: No, but you could have inquired into it.

SENATOR HUBBARD: Well, if you had inquired into this question then...you wouldn't have to come down here now to beg the Governor to overturn a law that has only been in operation a month. Were you asleep?

MR. CAPERS: No, but I thought you were on the job.132

This debate about the law's validity had to be broken off at this point because Governor Strong had grown impatient with it as not germane to the purpose of the hearing. He did confirm, however, that no public discussion had taken place before or after the referendum: "Apparently it was accepted as a matter of course." Indeed, Strong observed that he had never heard anything about the law until 30 days before it was to go into effect, when he “began to be deluged with appeals to suspend the law.”133 To be sure, the governor's account may not have been accurate. In March he received a letter from a consulting mining engineer in Philadelphia stating that when he had called on Strong in the fall of 1917, the governor “indicated that there wa[s] a clause in the law, which permitted you to practically abrogate this section...altho you did not commit yourself at that time....”134

The failure of employers' representatives to contradict Hubbard's and Strong's charges that they had never protested against the bill before it was

112 “Hearings Before the Governor of Alaska on the Eight-Hour Law” at 115. Hubbard may in fact have been regarded as a legal authority since he had held important positions in the Justice Department in Washington, D.C. in the 1880s and 1890s and later in the Interior Department. Who's Who in Alaska Politics at 47-48.
133 “Hearings Before the Governor of Alaska on the Eight-Hour Law” at 116.
134 Letter from H. W. DuBois to Governor Strong, Mar. 14, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
enacted is puzzling. After all, the Anchorage Daily Times had reported on the "pyrotechnics" that were touched off in the House of Representatives on April 18, 1917, when "Judge John Winn, practicing lawyer of Juneau, dramatically declared, holding high in the air the bill, 'It is pernicious from every standpoint and not a single plausible excuse can be given for the bill.'" He then foretold of the "great calamity" for the territory's canner interests and the country's food supply if the bill were passed. Winn even claimed that if referred to the electorate, the bill would be voted down as heavily as the referendum had passed in 1916. Royal Gunnison, a Juneau lawyer representing the Pacific Fisheries Association, a former district judge, and Robertson's law partner, also addressed the House, submitting an amendment that would have exempted the canning industry. At the very least, then, the fishing industry had loudly resisted inclusion.

In spite of the governor's admonition, the issue arose again the next day when Joseph Murray, a miner-lawyer who had been a member of the House of Representatives when it passed the eight-hour law in 1917, spoke up on behalf of miners. The information he presented was arguably even more startling than Hubbard's. He revealed that he and other legislators had tried "to figure out some scheme whereby we would have a legitimate eight-hour law and still give the labor [sic] the opportunity of working overtime, at his election, without any risk if he didn't so elect; but after giving it a good deal of thought and after talking to other members and the men around this town of judgment and skill and brains, we couldn't figure any system of overtime." Murray's view that the law should not be suspended, but merely modified to provide for premium overtime wages, inspired Capers to subject him to the same grilling that Hubbard had undergone the previous day. His responses suggested that a more cynical attitude toward the bill had prevailed in the House than in the Senate:

MR. CAPERS: You are an attorney, I believe?
MR. MURRAY: Yes.
MR. CAPERS: Did you ever consider the validity of this act before it was passed?

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137Unfortunately, the lack of a transcript of the legislative debates makes it impossible to flesh out the full scope of what employers and legislators said about the law.
138Who's Who in Alaskan Politics at 70.
139"Hearings Before the Governor of Alaska on the Eight-Hour Law" at 135.
140Although his statement is not clear, it seems that Murray believed that the entire overtime debate was "only a question of mathematics as to whether that scale would be changed." "Hearings Before the Governor of Alaska on the Eight-Hour Law" at 135.
MR. MURRY[sic]: Oh, yes.
MR. CAPERS: What is your view?
MR. MURRAY: I think it is doubtful. No eight-hour act like this has ever been sustained.

MR. CAPERS: Do you think, Mr. Murray, that you could have passed an unquestionable and valid eight-hour law? Or could you have improved on it?

MR. MURRAY: Well, I don’t think so. There has never been any general eight-hour law sustained in the United States. Every other law like it has been sustained under the police power....

MR. CAPERS: Do you think that you could have complied with the instruction given you and have passed a valid law that would have made those necessary exceptions?

MR. MURRAY: No; I tried that Mr. Capers.

MR. CAPERS: Wherein did you fail?

MR. MURRAY: Well, to begin with, there were other lawyers in the legislature besides myself. ... I consulted with the Attorney General and I took the floor, and I tried to have as many special bills passed under the police power as possible; for instance, the eight-hour act for women; the eight-hour act for underground placer mines, and the eight-hour act for surface work, and I stayed on the floor, and in talking with the attorneys around Juneau, none of them thought that the act would be sustained, and for that reason I wanted as many of them passed under the police power as possible.141

Although Strong finished his report to the interior secretary on February 25, four days after the hearings had ended, the Interior Department could scarcely wait. The very day he completed it, the department telegraphed: “can you not wire brief statement in code as to conclusions and recommendations....”142 The next day Strong had to telegraph back that it was not feasible to wire his conclusions and recommendations “owing to varied interests represented at hearings and ramifications of statements and testimony,” but advised Lane that it would be in the mail together with the stenographic transcript in two days.143 The fact that the district court held the statute unconstitutional on February 27, the day after Strong had dispatched his telegram, may have lessened Secretary Lane’s interest in the report.144 Strong himself understood which way the judicial wind was blowing:

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141“Hearings Before the Governor of Alaska on the Eight-Hour Law” at 136-37.
142Meyer to Governor Strong, Feb. 25, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
143Governor Strong to Secretary Interior, Feb. 26, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
144A month after he had submitted his report, Strong responded to an inquiry from a firm of consulting mining engineers with offices in Philadelphia and Paris about the eight-hour law that he was not at liberty to disclose his hearing findings, which he assumed would be “made public in due course” by the interior secretary or the Council of National Defense. Governor to H. W. DuBois, Philadelphia, Mar. 28, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
on receiving a telegraphic inquiry on February 27 as to the exempt status of mills manufacturing airplane spruce, Strong wired back instead that the law had been held invalid.145

Based on the hearings and his experience, Governor Strong believed that "there is some difference of opinion among the working people. Some are in favor of overtime while others are emphatically against it."146 His forthright report to the interior secretary rested largely on his finding that, contrary to employers’ claims, the labor shortage was no more acute in Alaska than elsewhere in the United States, and "that if an eight-hour day were guaranteed the workers in Alaska with a fair scale of wages, a sufficient supply of labor...will be available to meet the demands of the various industries."147 The decline in Alaska’s population—from 64,356 in 1910 to 55,036 in 1920148—was misleading in the sense that most of the cannery workers were “imported”149 and thus not included in the census enumerations. In 1913, for example, 5,000 of the 13,000 cannery workers were Chinese and Japanese “brought up from Seattle, San Francisco, and Portland in the summer time...and then ship[ped] back....”150

Strong’s seemingly prolabor stance must be gauged against the background of his prior suspension of the law as to fisheries, which by 1917 were the territory’s largest industry, and the fact that the other major industry, mining,151 was subject to a special eight-hour law not affected by the controversy surrounding the general eight-hour law. Strong also rejected opponents’ allegations that those voting in favor of the eight-hour bill in 1916 had not understood the referendum. On the contrary, during the eighteen months the matter was before

145J. J. Daley and H. Shattuck to Governor Strong, Feb. 26, 1918, and Strong to Shattuck, Mar. 1, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives. For similar correspondence, see telegram from Ketchikan Iron Works to Governor Strong, Feb. 22, 1918, and Strong to Ketchikan Iron Works, Mar. 1, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
146"Hearings Before the Governor of Alaska on the Eight-Hour Law" at 218.
147Letter from Governor Strong to Secretary of the Interior at 5.
150The Building of Railroads in Alaska at 15 (testimony of Alaska congressional Delegate James Wickersham). Into the 1920s, these groups continued to account for 30 percent of fisheries workers. "Biennial Report of the Territorial Labor Commissioner to the Governor of Alaska 1921-22" n.p. (1923), in Record Group 101, Ser. 130, Box 221, Alaska State Archives.
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the public, he wrote, "no opposition to the proposal was indicated by the newspaper press or politicians, or others. I have, therefore, to conclude that when the people voted for this measure, they knew exactly what they were voting for." This assertion may have been somewhat facile since public discussion of an eight-hour law had not dwelt on what became the statute’s two principal features—coverage of businessmen and the absence of a provision for overtime work and pay.

Strong’s recommendation to the secretary of the interior that no further suspension of the law be authorized (except with regard to the infant agricultural industry) was largely rooted in his pragmatic attitude toward avoiding labor unrest during the war. He reported to Lane that employers’ agitation in favor of suspending the law had sparked a unionization movement all over Alaska which, in Strong’s view, “will not end until every town and hamlet where any considerable amount of labor is employed, is organized....” Conflating Alaska’s unique law with other hours laws, he emphasized that suspension would bring about strikes and “chaotic conditions” in all industries.

Labor in Alaska knows that the demand for an eight-hour day is nation-wide, for the workers regard it as an accepted national policy. Therefore...labor professes to see in the effort being made to set aside the Territorial 8-hour law, a deliberate design on the part of the employers to demand in its stead a ten-hour work day or more, all under the cover of patriotism, but really that their profits may be increased at the expense of the country and of labor. I make no comment on this phase of the Alaska labor situation, but I know that the feeling exists. Alaska labor...states unequivocally that it is willing to serve the Government in any capacity, to work such hours and for such pay as the Government may justly determine, but it is unwilling to serve public corporations or private employers on terms dictated or influenced by them.

V

The governor’s hearings coincided with other important developments driving toward a denouement. On February 4, 1918, Thomas Riggs and William Edes, members of the federal Alaskan Engineering Commission (which was charged with oversight of the planning and construction of federally owned railroads in the territory), submitted to the Interior Department, which had

152 Letter from Governor Strong to Secretary of the Interior at 9.
153 Letter from Governor Strong to Secretary of the Interior at 10.
154 Letter from Governor Strong to Secretary of the Interior at 9.
jurisdiction over Alaska, their “Memorandum Regarding Effect of Territorial Eight Hour Law,” stating their reasons for opposing the law, which overlapped with employers’ views. Organized labor in Alaska, which considered Riggs antilabor and opposed his appointment as governor, was informed of this letter in March by the chairman of the U.S. Senate Committee on the Territories and published it to support its position.\(^{156}\) By February 6, the Interior Department had already sent a copy of the memorandum to Governor Strong.\(^{157}\) The statute in their opinion “will practically destroy many industries in the territory” and exacerbate a scarcity of labor in a place where “the active working season...is practically only six to seven months, and work during that period should be ‘speeded up’ rather than ‘slowed down’....” Riggs and Edes predicted impracticality of enforcement, especially on railroads, which would have to carry extra crews in case of delay since railway delays would not meet the statutory definition of putting life or property in danger. The labor shortage, in turn, might make it “extremely difficult to put on additional crews of stevedores.” They also called attention to the fact that the statute made no provision for payment for overtime: “We venture the opinion that many of the people of Alaska when voting for such a law thought it would mean considerable extra pay for some extra hours, and would be considerably surprised to learn that such is not the case.” Riggs and Edes also noted that the “humanitarian object of the law” would conflict with the work patterns of men who worked eight hours for the railways and additional hours elsewhere. Finally, they based their recommendation that the Interior Department suspend the law on their opinion that most of the laboring population of Alaska with the exception of those doing underground work in mines, would prefer to work over eight hours during the long days if by so doing they got additional compensation.

The application of the law, especially at this time when supplies of copper and other ore are necessary for carrying on the activities of the war, would in our opinion be very disastrous....\(^{158}\)

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Organization (1922).


\(^{157}\)Letter from Assistant to the Secretary of the Interior to Governor Strong (Feb. 6, 1918), in Record Group 101, File Code 156, Box 159, Alaska State Archives.

\(^{158}\)Wm. C. Edes and Thomas Riggs, Jr., “Memorandum Regarding Effect of Territorial Eight Hour Law,” Record Group 101, File Code 156, Alaska State Archives (Feb. 4, 1918). The version published in the newspaper deviated slightly from the original; “Of Course He Is in Favor of Enforcing 8 Hr. Law ‘Nit’,” *Daily Nome Industrial Worker*, Apr. 8, 1918, at 1, col. 4-6.
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After months of efforts devoted to promoting Strong’s reappointment and undermining Riggs’s appointment, Wickersham was “shocked” to read in the morning newspapers on March 7 that Wilson had nevertheless appointed Riggs. In response to attacks by Alaska labor unions against him for opposing the eight-hour law, Riggs insisted to the Committee on the Territories, which was holding hearings on his nomination, that he favored the law with “price-and-a-half for overtime work.” In his diary, Wickersham sneered that Riggs, a “good Guggenheim Republican,” “will do what the Big Interests want done.” Specifically, Riggs “will suspend the law—if course—if requested.” Despite the attacks on Riggs for being “too friendly towards the Guggenheims and other big concerns,” his answer apparently satisfied the senators: Strong, who had incurred the enmity of fellow Democrats for having helped certify Wickersham as winner of the 1916 election for congressional delegate against the Democrat Charles Sulzer—in April 1917 the Democratic Party central committee had voted not to endorse Strong for reappointment—withdrawed from consideration, and in April was succeeded by Riggs as territorial governor.

VI

More important than the Edes-Riggs memorandum was the fact that just weeks after the law had gone into effect, a test case had been argued and decided involving the Northern Commercial Company, a large and powerful quasi-monopolistic mercantile enterprise with stores and operations throughout Alaska, which was so widely resented that it had antagonized even many employers.
On January 22, 1918, just three weeks after the law went into effect, the Justice’s Court\textsuperscript{167} for the Fairbanks Precinct issued an arrest warrant to the U.S. marshall for the Northern Commercial manager in Fairbanks because one of its salaried employees had been hired to work more than eight hours per day and had in fact worked more than eight hours the previous day although neither life nor property had been in imminent danger.\textsuperscript{168} The manager was arrested the next day, but the government dismissed the charges against him, and on January 24 the court, despite the company’s plea that the statute was unconstitutional and void, found Northern Commercial guilty and fined it $250.\textsuperscript{169} On appeal to the district court, the employer further alleged that the act was void because the legislature had not complied with the congressional Organic Act by virtue of failing to give the bill the requisite number of readings.\textsuperscript{170}

In mid-February, in the midst of Governor Strong’s hearings on suspension of the law, District Court Judge Charles Bunnell held two days of hearings in Fairbanks, which were closely followed and widely reported. Bunnell, who had come to Alaska in 1900 as a teacher, left that occupation to practice law and engage in business, owning a lumber company and sheet metal works, and serving as president of the Valdez Chamber of Commerce. He was also active in the Democratic Party, becoming its unsuccessful candidate for delegate to Congress in 1914 against Wickersham, who was not alone in his belief that President Wilson had appointed Bunnell as district judge of the Fourth Division in 1915 as a reward for having run against him. Wickersham, a Progressive, also believed that “Big Interests” (meaning the Guggenheim-Morgan syndicate) had lobbied the Attorney General on Bunnell’s behalf.\textsuperscript{171}

\textsuperscript{167}On the Justice’s Court, see Act of June 6, 1900, ch. 786, §§ 944-1014, 31 Stat. 321, 480-89.

\textsuperscript{168}United States v. Northern Commercial Co. and George Coleman, Complaint, No. 934 Cr. (Commissioner’s & Ex Officio Justice of the Peace Court, Fairbanks Precinct, 4th Judicial Div., Terr. Alaska, Jan. 22, 1918); Warrant of Arrest, in Nat. Archives, Pacific Alaska Reg., Record Group, No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 762.

\textsuperscript{169}United States v. Northern Commercial Co., Transcript, in Nat. Archives, Pacific Alaska Reg., Record Group, No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 762.

\textsuperscript{170}United States v. Northern Commercial Co., Second Amended Demurrer (D. Alaska, 4th Div., Feb. 13, 1918), in Nat. Archives, Pacific Alaska Reg., Record Group, No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 762.

\textsuperscript{171}Cashen, \textit{Farthest North College President} at 29-30, 39-79, quote at 63; Atwood, \textit{Frontier Politics} at 281. Wickersham mentioned among Bunnell’s advocates Wilds Richardson, chairman of the Alaska Road Commission, whom he accused of being a Syndicate lobbyist. Stearns, “The Morgan-Guggenheim Syndicate” at 320. As a result of Judge Bunnell’s involvement in certifying the results of the 1916 election for Alaska delegate to Congress, which was contested by Wickersham, the latter mobilized his supporters to induce the Judiciary Committee not to confirm Wilson’s appointment of Bunnell (1878-1956) to a second four-year term in 1919, and he served as a recess appointee until 1921, at which time he became the founding president of the Alaska
Bunnell, as already noted, was no stranger to eight-hour law adjudication, having just 16 months earlier held invalid, on the thinnest of formal-technical grounds, the 1915 act amending the 1913 eight-hour law to include underground placer mining. Why, given Bunnell's proven jurisprudentially narrow mind in eight-hours adjudication, the United States chose to bring its test case in the Fairbanks Division is puzzling, since it presumably could also have found violations by Northern Commercial or other employers in the other judicial divisions.

The press noted that the new eight-hours case "means more to the country than any put to the test in several years" and that it was believed that whichever side lost would take the matter to the U.S. Supreme Court. The case was also "awaited with a great deal of interest. as almost everyone in the territory is anxious to learn whether or not the law will stand the test." On February 27, in a decision that he read for 45 minutes to a "courtroom...well filled with spectators, men from all walks of life, all interested in the outcome of the case," and that was reported in a front-page banner headline in the territorial press, Judge Bunnell struck the law down as "plainly and palpably beyond all question in violation of the Fourteenth Amendment to the Constitution...." First, the judge

Agricultural College and School of Mines and then of the University of Alaska from its founding in 1935 to 1949. Id. at 93-103; In re Wickersham, 6 Alaska 167 (4th Div. 1919); Wickersham, "Diaries," Dec. 7 and 12, 1918; Subcommittee of the Senate Judiciary Committee, "Nomination of Charles E. Bunnell as United States District Judge for the Fourth Judicial Division of the Territory of Alaska" (unpub., Dec. 31, 1920-Jan. 5, 1921); 3 Who Was Who in America (1951-1960) at 121 (1966); "Biographical Outline: Charles Ernest Bunnell," in Alaska and Polar Regions Archives, Rasmuson Library, University of Alaska Fairbanks. In the 1914 election, Wickersham received almost twice as many votes as Bunnell in all of Alaska and almost three times as many in the Fairbanks Judicial Division, where Wickersham had been and Bunnell was about to become district judge. Fairbanks Daily News-Miner, Nov. 7, 1916, at 4, col. 3. Governor Strong apparently adopted a hands-off attitude toward appointment of a judge for the Fourth Division. Shortly after Bunnell's appointment he replied to a correspondent who had urged him to give favorable consideration to someone else that: "Mr. Bunnell is a young man of more than ordinary ability, a good lawyer, I understand, and a man of probity in every way, and I venture to predict that he will give general satisfaction." Letter from Governor to T. H. Deal, Jan. 8, 1915, in Record Group 101, Ser. 130, File 52, Box 129, Alaska State Archives.


United States v. Northern Commercial Co., slip. op. at 17 (Decision on Demurrer, D. Alaska, 4th Div., Feb. 27, 1918), in Nat. Archives, Pacific Alaska Reg., Record Group No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 762.
denied that the law derived any validity from the majority referendum vote in its favor. Indeed, the very fact that the Alaska Organic Law did not provide for such referenda created a "suspicion" in Bunnell's mind that a legislature that attempted to act beyond its powers "was actuated by some undisclosed motive."\(^\text{177}\)

With rhetorical flourish Bunnell portrayed the statute's uniqueness:

Although ably assisted by counsel...I confess myself unable to find, and counsel are unable to produce any act of any legislative body in the United States which, from the standpoint of word use and word construction, belongs in a class with this act. It is fairly entitled to the unique distinction of being alone though in a multitude.\(^\text{178}\)

Bunnell failed to document this uniqueness adequately, but he did emphasize that the law expanded the meaning of "employment" by construing it to include performance of labor or services even by a partner. He went on to locate the act's unconstitutionality in its indiscriminately limiting the hours of all wage and salary earners without showing that the working conditions of clerks, carpenters, and cooks made regulation of their hours as reasonable as those of miners; it was also defective because it failed to provide for overtime payment for emergency work. The court ruled that to use the state police power to deprive a carpenter of the right to work four hours on a neighbor's house after having worked eight hours that same day for a contractor directly violated the Fourteenth Amendment to the U.S. Constitution.\(^\text{179}\)

Within days after Bunnell had handed down his decision, the government secured a new indictment against the Northern Commercial Company, this time for an eight-hours violation committed on March 4.\(^\text{180}\) Later that month Bunnell disposed of the case in a reported decision adopted almost verbatim from the previous case.\(^\text{181}\) On March 5, one of Lane's assistants requested Wickersham to prepare a brief in opposition to suspension of the law, which Wickersham filed with Lane on March 11 although he believed that Lane would nevertheless

\(^\text{177}\)United States v. Northern Commercial Co., slip. op. at 4-5.

\(^\text{178}\)United States v. Northern Commercial Co., slip. op. at 5. Curiously, this passage was absent from Bunnell's second opinion a month later, which largely recycled the first opinion.


\(^\text{180}\)United States v. Northern Commercial Co., Indictment, No. 764 Cr. (D. Alaska Terr., 4th Jud. Div., Mar. 5, 1918), in Nat. Archives, Pacific Alaska Reg., Record Group, No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 764. This time the same manager whom the government had dismissed as a defendant in the first case appeared not only as a defendant, but also as the employee whom the company had unlawfully employed more than eight hours. Possibly this modification was a response to Bunnell's ruling in the first case that "[o]bviously, under the law the one performing the labor or services is liable." United States v. Northern Commercial Co., slip op. at 8.

suspend the law. In spite of Bunnell’s decision, on April 4, Interior Secretary Lane requested that the governor suspend the law as to fertilizer oil and other fish industry by-products, the next day Strong ordered the suspension under the law that had just been declared invalid.

The ambivalence that purported supporters of the law displayed was captured by an editorial in the Alaska Daily Empire at this juncture that focused on the question of overtime. The newspaper, which proclaimed that it “has always ob­served the eight-hour day”—to be sure, paying for the extra work when employees worked more than eight hours—started from the proposition that Alaskans “are unequivocally committed to the principle that eight hours shall con­stitute a day’s work in Alaska.” However, the editor felt that the inhibitions against “over-time” in the present law are too drastic. In a country that is far away from centers where extra men can be secured to take care of a rush of work the only way that the output of a concern that depends upon skilled workmen can make its production elastic is to permit men to work “over-time” in cases of emergency. ... The Empire believes that the time has not arrived in Alaska for prohibiting skilled men from working “over time” for extra pay when it would be for the interest of both employer and employee for them to do so.

In most of the States where they have passed laws limiting the “over-time” that men may work the limit applies to the week rather than the day. Under the present law in Alaska men are permitted to work eight hours a day for seven days a week. It would fit the situation better to make the week the unit, and prohibit more than 56 hours work in any one week.

On April 12, the Alaska Labor Union requested that the Justice Department appeal the decision, on April 22 the U.S. Attorney General Thomas Gregory directed Rinehart Roth, the U.S. District Attorney for the Fourth Judicial District, to seek a writ of error, and on May 4 Roth petitioned for and Bunnell issued an order allowing a writ of error so that the government could appeal the decision.

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183 Telegram from Franklin K. Lane to Governor of Alaska, Apr. 4, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
184 Territory of Alaska, Governor’s Office, Executive Order, Apr. 5, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives. See also “Received from Governor Strong; Via Yesterday’s Mail,” Daily Nome Industrial Worker, Feb. 28, 1918, at 5, col. 1; Report of the Governor of Alaska, in 2 Reports of the Department of Interior for the Fiscal Year Ending June 30, 1918: Indian Affairs Territories, at 565 (65th Cong., 3d Sess., H. Doc. No. 1455, 1919).
185 “The Eight-Hour Question,” Alaska Daily Empire, Apr. 6, 1918, at 2, col. 1.
to the U.S. Supreme Court. But five days later the U.S. Solicitor General, John W. Davis, informed Roth that on further reflection he had convinced the Justice Department that the writ of error "could not be successfully prosecuted." The same day Gregory informed Roth that he was revoking his telegram of April 22, which had directed him to seek a writ of error.

Riggs, who had become governor on April 12, also involved himself in the litigation on May 9, wiring Judge Bunnell for information about the status of the case. On receiving word from Bunnell the next day of Gregory's revocation, Riggs immediately wired to Interior Secretary Lane: "Desirable this question be settled. Shall we proceed in perfecting appeal?" Three days later Lane's office replied rather dismissively to Riggs that, given the revocation, "no further action on the part of the Governor of Alaska or this Department is necessary on any of the applications presented to the Department for suspension of the operation of the act above-mentioned." Riggs, however, driven by public and personal agendas, was not so easily dismissed. He informed the interior department that:

The District Attorney of this Division holds that this case does not cover the whole question and is applicable only in this one special instance, and that any number of cases may still be brought under the law. This office is constantly in receipt of requests for advice regarding the legality of the law and I have even been threatened with prosecution by certain members of the local union owing to the fact that my household servants are on duty more than eight hours during the calendar day. [T]he District Attorney and...the Attorney General for the Territory...are positive in their statements that the law should be definitely settled one way or the other. In consequence, the Attorney General of the Territory has wired the Attorney General of the United States requesting that an appeal be entered.

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187Nat. Archives, Pacific Alaska Reg., Record Group, No. 21, Box No./Location 34 (01/10/08(2)), File: Case # 764. Roth had made the nominating speech for Bunnell as Democratic congressional delegate in 1916. Atwood, Frontier Politics at 281.

188Letter from Jno. W. Davis to R. F. Roth, May 9, 1918, in Charles E. Bunnell Papers, Box 1, Folder 5, Alaska and Polar Regions Archives, Rasmuson Library, U. Alaska Fairbanks.

189Telegram from Gregory to Roth, May 9, 1918, in Bunnell Papers, Box 1, Folder 5.

190Governor Riggs to Judge Bunnell, May 9, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.

191Judge Bunnell to Governor Riggs, May 10, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.

192Governor Riggs to Secretary Interior Lane, May 11, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.

193Letter from E. C. Bradley, Assistant to the Secretary, to Governor Riggs, May 14, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.

194Governor to E. C. Bradley, May 28, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives. Based on the Justice Department's position, the Interior
Attorney General George Grigsby of the Territory of Alaska had indeed requested that the Justice Department not dismiss the appeal, but Solicitor General Davis rejected the request because the Department saw no basis to support the statute's validity:

The statute...forbids the employment of all wage-earners and salary-earners for more than eight hours in any day except in cases where life or property is in imminent danger. It is not limited in any way to unhealthful, hazardous, or exacting occupations, nor to children, women, or other classes demanding special care or protection. It has no such ostensible relation to the public health as the statutes upheld in Holden v. Hardy...and Bunting v. Oregon.... That the right to earn a living is a property right and one which cannot be taken away without due process of law or adequate justification under the police power is axiomatic.\footnote{195}

In the pithier language of the Nome Industrial Worker, the Justice Department deemed the eight-hour law invalid because it "applies to all whether working for themselves or for others and it is this amnibus [sic] feature that is disliked."\footnote{196}

A few days later Davis disposed of the governor's request in a letter to the Interior Department: "We cannot concur in the suggestion of Gov. Riggs that the law can be definitely settled only by a submission of the matter to the Supreme Court of the United States. There are many questions, of course, which reach a final settlement without the adjudication of that tribunal."\footnote{197} By indirection the Justice Department appeared to be suggesting to Riggs that he would have to find other ways for putting the quietus on rambunctious labor unions than frivolous political appeals to the Supreme Court. Attorney General Gregory himself was preoccupied at the time with prosecuting the International Workers of the World and others for making remarks interpretable as claims that World War I was being fought "for the so-called capitalist class...."\footnote{198}

Arguably the most astute legal question at this time was posed by the socialist Nome Industrial Worker, the newspaper of Local 240 of the International Union of Mine, Mill and Smelter Workers (formerly Western Federation of Miners).\footnote{199}

\begin{footnotes}
\item[195] Letter from Assistant Secretary to Governor Thomas Riggs, Jr., June 15, 1918, in \textit{id.}
\item[196] "Present Status Eight Hour Appeal," \textit{Tri-Weekly Nome Industrial Worker}, July 4, 1918, at 1, col. 4.
\item[197] Letter from Jno. W. Davis to S. G. Hopkins, Asst. Sec'y of the Interior, June 12, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
\item[199] As of the issue of July 9, 1917, the paper's masthead stated that the local's parent
Territorial Alaska's Absolute Universal Eight-Hour Law

In a telegram to Attorney General Grigsby on May 15, the paper asked: "Is Bunnell's decision binding from legal point of view other three divisions, Territory." Grigsby was presumably less impressed with the Industrial Worker's self-inspiring observation that "[w]e realize most effective way to enforce eight hour law is for workers organize," but the next day he did answer the question straightforwardly: "Improper for me to express opinion on validity, believe law should be tested on Bunnell's decision. Not binding on any other three Divisions. But in view of attitude of Department of Justice, Attorneys might regard it as authority."200 Since Nome was located in the Second Judicial Division and thus outside of Bunnell's jurisdiction, workers there were free to consider the law still valid.

The radical labor movement's reaction to the judicial repeal of the eight-hour law can be gauged by the Industrial Worker's stream of editorials over the following months directing a barrage of insults at "the ever accommodating Judge Bunnell one of the brightest ornaments of the democratic machine in the Fourth Division."201 The newspaper espoused a countermodel of statutory and constitutional legitimation: "ORGANIZE AND YOU SHALL BE THE ONES WHO SHALL DECLARE SAID LAWS CONSTITUTIONAL."202 In an editorial repeatedly using the key Marxist term, "labor power," the Industrial Worker put newly arrived miners on notice that the eight-hour law "HAS BEEN DECLARED CONSTITUTIONAL BY ORGANIZED LABOR."203 An article hailing ditch men who had quit in solidarity with the eight-hour strike urged miners to "[t]ell the boss or anybody else that you intend to abide by the eight hour law which has been adopted by ORGANIZED LABOR. (Regardless of the opinion of the likes of Judge Bunnell...)."204

In spite of its insistence that placer miners had not gained the eight-hour day because instead of relying on themselves, they had "relied upon a legislature which is attached to the interests of the bosses,"205 the paper declared:

Beyond anything that has occurred in recent years the enforcement of the general

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200 "Miners Union Wired Grigsby-He Replied," Tri-Weekly Nome Industrial Worker, May 16, 1918, at 1, col. 5-6.
202 "Mr. Working Man," Tri-Weekly Nome Industrial Worker, June 6, 1918, at 2, col. 1.
204 "Several Ditch Men Quit Work," Tri-Weekly Nome Industrial Worker, May 16, 1918, at 1, col. 4 at 6.
205 "Mr. Working-Man," Tri-Weekly Nome Industrial Worker, May 14, 1918, at 2, col. 1 at 3.
eight hour law is most correctly to be considered the most important one to the working class the population within the Territory has faced since Alaska was purchased from Russia. ... Bunnell’s decision ought to be self evident to the working-class that the only way to enforce such a law is to thoroughly organize, and convince Bunnell and the likes of him that his decision is not worth the paper it is written upon. It challenges the standing of corporation satellites to attempt to legislate for the small minority as against the rights of the workers who perform the functions of producing for a bunch of a worthless parasites.206

VII

Considerable light is shed on the fate of Alaska’s eight-hour law by Governor Riggs’s first annual report, in which he repeated publicly the fears he had expressed internally to the Wilson administration about the consequences for the political legitimation of the territorial government of failing to reach closure:

An attempt was made to have an appeal perfected on writ of error. By order of the Attorney General of the United States the district attorney of the fourth judicial district was not permitted to enter the appeal and all district attorneys of the four judicial divisions instructed not to enter any suit under the act. Later the attorney general of the Territory essayed to appear for the United States...but this attempt was also denied by the Department of Justice. The striking miners’ union at Nome contended that the Attorney General had no authority to deny an appeal and remained on strike throughout the entire placer mining season, at the same time expressing a determination to maintain the law until definitely expunged from the statute books by a decision of the highest court. A conciliator of the Department of Labor sent to Nome...was unable to arrange an agreement between the gold mining operators and the strikers, the strikers holding out for an eight-hour day...and the principal operators holding firm to a longer day on a straight hourly basis without the time-and-a-half overtime feature, on the ground that placer mining with all the additional war-time costs would be unprofitable. An expression from various Alaskan unions showed considerable variance of opinion. The sentiment for a straight eight-hour day and for an eight-hour day with time-and-a-half overtime...being about equally divided, as is the sentiment regarding the validity of the court’s decision. It is to be regretted that an appeal was not allowed to be taken as, until the question is settled definitely for all time, there will be a recrudescence of labor disturbance. ... Unless the legislature of the Territory will voluntarily amend the law or unless the Department of Justice will allow an appeal, I look for continued labor unrest.207

207 Report of the Governor of Alaska, in 2 Reports of the Department of Interior for the Fiscal Year Ending June 30, 1918: Indian Affairs Territories, at 565 (65th Cong., 3d Sess., H. Doc. No. 1455, 1919). For an almost identical account, see 1 Reports of the
Riggs’s interest in Supreme Court review may also have been a function of his own desire for definitive repeal of the law, but he did not wait for that eventuality to begin conducting his wartime campaign against so-called idlers and slackers and the Wobblies. Thus after the Navy had dispatched four ships in June at his request to forestall I.W.W. agitation among cannery workers, the governor received a telegram in July from the chairman of the Selective Service Board in Nome wanting to know whether he could reclassify the striking gold miners (whom Riggs had discussed in his annual report) and draft them for refusing work in an industry essential to the war effort. Without any mention of the eight-hour law that the miners were trying to enforce, Riggs instructed him to consult the district attorney if the situation required “immediate action” against “idlers.”

The next day the governor wired the Nome Industrial Worker in the same matter that, since the eight-hour law had been “construed both by the courts and by the department of Justice...to be unconstitutional and District Attorneys instructed from Washington not to prosecute under it,” gold miners “dissatisfied with existing conditions should sink personal grievances to assist the smooth running of industry from a patriotic standpoint.”

That same day, however, Riggs was apparently sufficiently unsure of himself that his office telegraphed the Provost Marshal General in Washington asking whether he had been correct in advising the Nome Selective Service Board that gold miners striking for an eight-hour day under a law declared unconstitutional were “idlers.”

Amusingly, the governor’s abiding concern with labor unrest prompted him to use the same law to pressure employers that he castigated striking gold miners for seeking to uphold. In June, he sent admonishing letters to fishing employers that were taking advantage of the suspension of the eight-hour law, which in the

Department of Interior for the Fiscal Year Ended June 30, 1918, at 142 (1919).

208 "Naval patrol for Alaskan Coast,” Tri-Weekly Nome Industrial Worker,” May 28, 1918, at 1, col. 1; Stewart, “The Alaskan Home Front During World War I” at 16-17.

209 Telegram from Governor Riggs to [Carl] Lomen, July 15, 1918, in Record Group 101, Ser. 440, Box 90, Alaska State Archives.

210 Telegram from Governor Riggs to Industrial Worker, Nome, July 16, 1918, in Record Group 101, Ser. 440, Box 90, Alaska State Archives.

211 Telegram from Finnegan, Executive Officer, to Crowder, July 16, 1918, in Record Group 101, Ser. 440, Box 90, Alaska State Archives.

212 Telegram from Governor Riggs to [Carl] Lomen, July 19, 1918, in Record Group 101, Ser. 440, Box 90, Alaska State Archives.

213 Stewart, “The Alaskan Home Front During World War I” at 18.
meantime had become unenforceable (but not in the First Judicial Division in which their businesses were located), although Riggs, like the miners he was berating, was wont to inform correspondents that "the law as passed is still upon the statute books":214

It has been brought to my attention that the men in your employ are working ten hours a day without additional compensation for two hours' overtime. The intention of the Council of National Defense and the Secretary of the Interior was not to do away with the basic principle of an eight-hour day in connection with the fisheries, but to lessen the hardships entailed by the Territorial law. Your scale of wages should be at the rate of an eight-hour day, with time and a half for overtime.

Will you kindly advise me if my information is correct and, if so, if you will not take steps to amend your schedule to the eight-hour basis, as contemplated by the various proclamations.215

To be sure, it is unclear what proclamations Riggs meant since Governor Strong's proclamations suspending the law as to fisheries contained no such statements concerning overtime, while the proclamations issued by President Wilson in March and April 1917 applied only to government contracts.

In contrast, the Nome Industrial Worker at this time was heaping abuse on proponents of overtime. In an editorial, the miners union found it "amusing to hear those scab apologists insist that the eight hour day is all right, but a man should be let work overtime. In point of fact everyone is willing to concede the eight hour day 'in principle' but they want to work ten or twelve, with overtime at straight time."216

The most tantalizing evidence that Riggs had joined with other officials in an effort to deal with the aftermath of Judge Bunnell's decision is a letter that he received, on official stationery of the Department of Justice/Office of Clerk of the District Court for the Territory of Alaska, from Judge Bunnell's clerk, Joseph E. Clark. Since district court judges appointed their clerks and Bunnell had appointed Clark, who had previously been chief deputy clerk,217 to the much sought after post in 1915,218 he was presumably acting under Bunnell's instructions.219

214 Governor to Mrs. Alice M. Veatch, Aug. 1, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
215 Governor to Northland Dock Co. and New England Fish Co., Ketchikan, June 21, 1918, in Record Group 101, File Group 156, Box 159, Alaska State Archives.
217 Alaska Reports ix (appointed July 1, 1913).
218 Cashen, Farthest North College President at 69-70.
219 Act of June 6, 1900, ch. 786, § 6, 31 Stat. 321, 323. On the clerk's duties and powers, see id., §§ 7, 730, 31 Stat. at 324, 447. That a federal district court clerk was not
Dated August 20, 1918, this extraordinary letter raises more questions than it answers. Clark informed the governor that he had enclosed a copy of the decision and Davis’s letter to Grigsby, which “[w]e” had intended but omitted to give Riggs before he left Fairbanks. (Clark was sufficiently prominent in Fairbanks that the local paper mentioned only him and his wife along with the mayor and his wife as having been in the receiving line at a reception for Riggs a few days earlier.) The clerk then observed that it was “apparent” to him that Bunnell’s decision, based on Supreme Court precedent, together with the Attorney General’s position, “ought to settle for the time at least, the question of a General 8-hour law.” In a puzzling non sequitur referring to the Adamson Act, which was merely an overtime law, Clark then added: “We all know that the Democratic [sic] party is on record as being in favor of the 8-hour law, as was proven by the 8-hour railroad law passed in 1916.” Clark deepened the mystery by disclosing: “We are taking the meat of Judge Bunnell’s decision, having the same published, together with letters of the Attorney General on this subject, and will mail to every voter in the Fourth Division and will send a supply to the Second Division.” Finally, Clark told Riggs that “[w]e” would like to know what Charles Sulzer, Alaska’s Democratic delegate to Congress, said in reply to Riggs before “the pamphlet is printed,” but noted that they would proceed in any event, adding that he did not believe that Riggs had raised the eight-hour question in his letter.

Who “we” were, who was paying for the pamphlet, whether it was ever printed and distributed, and, above all, what the purpose of this campaign was all remain unclear. Since newspapers had lavished front-page banner headlines on the law and Bunnell’s opinion, and since Alaska workers and labor unions had been actively engaged in campaigns to enact and preserve the law, it seems unlikely that the pamphlet could have been designed to serve a purely informational purpose. After all, in Nome, the seat of the Second Division, the Industrial Worker had just lambasted Bunnell for having declared the law unconstitutional “by a piece of trickery” in these terms: “Such a travesty of justice has often been observed as this parasitic decision of Bunnell’s apparently given for the
unsophisticated working class to take for granted if they are boneheads enough to so do." 223

Did Bunnell and Riggs intend to convince voters of the constitutional hopelessness of any legislative intervention? Or, on the contrary, did they hope to persuade workers to support enactment of a watered-down, constitutionally valid, overtime law at the next legislative session in 1919? This latter possibility is consistent with an initiative that Riggs undertook two weeks after receiving Clark’s letter, sending telegrams to labor unions, asking: “Is the sentiment of your union in favor of an eight hour day only or eight hour day with overtime at increased rate of pay.” 224 According to an alternative interpretation, advanced by the chief archivist at the Alaska State Archives, Clark “slipped into a party voice and expressed his intentions to send the information regarding the law and judicial decision as a Democratic Party publication. Bunnell’s opinion and decisions by the Department of Justice not to pursue an appeal would not have been popular among the party faithful in the division.” 225 This scenario implies that Bunnell was not involved in the plan of his clerk, who might even have been engaged in an act of disloyalty toward his superior. However, in light of District Judge Bunnell’s commanding position within the Democratic Party in dispensing political patronage jobs, 226 it seems unlikely that he could have been kept in the dark about this unconventional yet public project. Moreover, the fact that Clark did not resign his position until May 1919—and then only to enter the automobile business in Colorado—at which time the Fairbanks Daily News-Miner’s reports depicted him as a hail fellow well met, does not suggest that Bunnell had fired Clark. 227

That Riggs and his associates were pursuing an accommodationist rather than a confrontational course is also strongly corroborated by the governor’s public


224Telegram from Riggs Governor, Sept. 8, 1918 (handwritten draft), in Record Group 101, File Group 156, Box 159, Alaska State Archives.

225Email from John Stewart to author, Apr. 10, 2000.

226Cashen, Farthest North College President at 63-70. As Governor Strong informed a correspondent who had sought his help in obtaining a position at the time of Bunnell’s appointment: “I do not care to suggest the name of anyone for the positions mentioned by you, or for any other position within the gift of Judge Bunnell, as I feel that he should be given a free hand in the selection of the men who will serve under him. ... There should be a number of positions within the gift of Mr. Bunnell, both clerkships and commission-erships, and you ought to land one of them.” Letter from Governor to B. J. McGinnis, Jan. 7, 1915, in Record Group 101, Ser. 130, File 52, Box 129, Alaska State Archives. See also Letter from Governor to L. F. Protzman, Jan. 14, 1915, in id.

preoccupation with the anarchy that labor radicals might rain down on Alaska at any moment. In his second annual report to the Secretary of the Interior for 1918-19, Riggs lamented:

The resident workingman is of the very highest type—capable, energetic, and thrifty—but unfortunately Alaska during the past year has received many immigrants of the most undesirable type. The I.W. W. and advocates of soviet rule have been most active in agitating disturbance. The lack of police protection is well known, and the radicals work openly in their efforts to disorganize industry. Unfortunately, there are very large numbers of ignorant, illiterate laborers of foreign extraction in the Territory, and in many places the seeds of sedition, skillfully sown, have fallen on fertile soil. Except for the mounting cost of living, there seems to be little dissatisfaction among the wage earners, practically all agitation emanating from that class who are denunciatory of all vested interests but whose hands show no signs of callus.228

In contrast, Wickersham, during his election campaign against Sulzer, enthusiastically supported the eight-hour law, attacked Bunnell for having "obligingly" declared it unconstitutional, and "paid his compliments to this moral cowardice upon the part of Sulzer" for refusing to take a stand on the grounds that it was improper to do so while the suspension was under consideration.229

As late as October 1918 Governor Riggs seemed tentative in informing an out-of-state lawyer who had inquired as to whether the eight-hour law was still in effect that an appeal of the decision holding it unconstitutional "to the present time...has been denied."230 In the event, "no final test was had on this, the only enforceable universal eight-hour law covering private employment enacted in America" before or since the enactment of the FLSA.231

VIII

At the beginning of the next legislative session in 1919, Governor Riggs announced that he would submit the letter he had received from the U.S. solicitor general explaining why the Justice Department had concluded that an appeal of Bunnell's decision would be a "mere waste of time and money." Nevertheless, Riggs, who regretted having to observe that to a small part of the Alaskan popu-
lation "the Red Flag and its teachings of tyrannical and chaotic Bolshevism represent an end to be attained, no matter through what means," declared that the legislature should consider a new eight-hour bill that could pass constitutional muster "to the end that, if possible, the desire of the electorate at the election of 1916 may be complied with." 232

In fact, five days later an eight-hour law was the very first bill introduced in that session of the Alaska House of Representatives. The Alaska Daily Empire underscored its importance by printing the entire text the next day. 233 Seeking to avoid the constitutional pitfalls that had tripped the 1917 law, its authors, Representatives John Dunn and George Pennington, chose to dilute it in several significant ways. First, although House Bill No. 1 still covered adult males, it was now restricted to persons who were "hired [or] permitted to work for wages," thus presumably excluding business partners. Second, the bill was careful to declare as interlocking Alaskan public policies that: no such workers were to work "for longer hours...or days of service than is consistent with his or her health and physical well-being and the ability to promote the general welfare by his or her increasing usefulness as a healthy and intelligent citizen"; and working any person more than eight hours daily "in any mill, sawmill, lumber yard, manufacturing, mercantile or mechanical establishment, or office, or store, or any express or transportation company, or telephone company, laundry, hotel or restaurant, is injurious to the physical health and well-being of such person, and tends to prevent him or her from acquiring that degree of intelligence that is necessary to make him or her a useful and desirable citizen." Third, the bill excepted from the eight-hours maximum "watchmen and employees when engaged in making necessary repairs or in case of emergency." And finally, the most radical element of the 1917 law was deleted by a proviso "that employees may work overtime conditioned that payment be made for such overtime at the rate of time and one-half the regular wage." 234

Two days after the bill's introduction, a mass meeting at Labor Union Hall in Juneau unanimously voted in favor of the bill as well as one extending coverage to the canneries. That some workers were prepared to recede from their maximalist demands was clear from remarks made at the meeting. For example, a member of the Cooks and Waiters Union approved of the new overtime provision


234 House Bill No. 1, §§ 1-2, Territory of Alaska, Fourth Session, Alaska State Archives, Records of the Territorial Legislature, Record Group 34, 1919, Series 30, Box 5180; The Journal of the House of Representatives of the Fourth Legislative Assembly of the Territory of Alaska at 56-57.
on the grounds that “limiting...men to an eight-hour day would not be practicable in Alaska.” Even greater skepticism was expressed by former Senator Hubbard, who doubted the new bill’s constitutionality although he supported the effort. The bill’s co-author, Representative Dunn—a Denver lawyer who had been prospecting in Alaska since 1905—seemed on firmer jurisprudential footing when he urged its constitutionality on the grounds that it followed the Oregon overtime law, which had been upheld by the U.S. Supreme Court. The fact that a fishermen’s representative who had supported the absolute eight-hour law at the governor’s hearing a year earlier now called the Dunn-Pennington bill a “masterpiece” suggests that at least part of the labor movement had abandoned hopes of combating a mandatory longer workday through state intervention. Although several locals of the Alaska Labor Union did endorse the Dunn-Pennington bill, the Nome Industrial Worker reported that “no union locals affiliated with the American Federation of Labor has [sic] given its endorsement to the bill in its present emasculated condition.”

That compromised condition appears to have corresponded to Representative Pennington’s own politics. On the one hand, just the previous year he had joined a labor union at the age of 62, believing: “Capitalists are blind if they cannot see and understand the forces working about them.” He warned employers that if they failed to recognize workers’ “rights, backed by justice, then they are manufacturing the very kind of men which they so much seem to fear.” On the other hand, the day after introducing H.B. 1, Pennington, in conformity with the legal landscape of the lower 48 states, also filed his anti-Bolshevik “Bill to Guard Alaska Against Unamericanism,” which criminalized the use of any flag to symbolize a purpose to overthrow or to advocate overthrowing the government of the United States or Alaska “by the general cessation of industry.” He had also

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236 "Rising Vote on Labor Problems at Mass Meeting,” Alaska Daily Empire, Mar. 3, 1919, at 8, col. 4.


238 "Legislature Busy at Juneau,” Weekly Nome Industrial Worker, Apr. 5, 1919, at 1, col. 4. See also “Eight Hour Law Is Discussed at Meeting Alaska Labor Union,” Alaska Daily Empire, Mar. 11, 1919, at 8, col. 1. The Alaska Labor Union had been founded in 1916 as a socialist organization, but dropped that orientation by 1917. Sullivan, “Sour-dough Radicalism” at 232.


240 See, e.g., Murphy, World War I and the Origin of Civil Liberties in the United States.

241 "Bill to Guard Alaska Against Unamericanism,” Alaska Daily Empire, Mar. 12, 1919, at 2, col. 5; H.B. No. 3, §§ 1-2.
agreed not to include canneries in the bill because he and Dunn believed that it was "possibly" just to do so since those employers had already made their contracts; nevertheless, he told the mass meeting that if workers wanted to include the fishermen, he was "willing to go down to defeat with the bill on that proposition." Excluding the canneries was tantamount to gutting the law: in 1919 the fishing industry employed 28,500 workers (90 percent of them in salmon canneries) at a time when the entire population of Alaska was only 55,000.

At the beginning of April, Dunn presented to the Committee on Labor, Capital and Immigration a telegram from laborers in Anchorage supporting his bill with amendments to include canneries, and the committee promptly adopted the amendment, which also provided for coverage of logging camps. The Committee of the Whole issued a report recommending that the bill pass with these amendments. It also recommended that the chairmen of the Committees on Labor, Capital and Immigration and Judiciary and Federal Relations be required to submit the amended bill to Alaska's attorney general for his opinion on its legality and constitutionality.

The day after receiving the chairmen's request, Attorney General Grigsby sent the chairmen a comprehensive 13-page legal analysis of the bill—the full text of which was published in the Juneau newspaper—concluding that most of the bill could pass constitutional muster. Grigsby instructed the legislature that no hours law had "ever been upheld on the theory that the constitutional right of all persons to contract freely is subject to regulation at the hands of a legislative majority regardless of the character of the employment which is the subject of the contract." Based on the U.S. Supreme Court's decision upholding the Oregon hours law in 1917, Grigsby concluded that H.B. 1, which he regarded as "prac-
tically a duplicate” except as to the occupations covered and limitation of hours, would be upheld if it were limited to mills, factories, and manufacturing, saw mills, fisheries, logging camps, laundries, and transportation companies. But as to lumber yards, hotels, restaurants, telephone companies, offices, and stores, he believed that “whatever degree of unhealthiness is attached to such occupations is too remote to justify the exercise of the police power.”249 By “including almost every known occupation, ranging from that of a logger in the woods to a lawyer’s or doctor’s clerk,” the legislature ran the risk that “courts might say that it is an attempt, in the guise of a health and public welfare law, to enact a general eight hour law.” Indeed, Grigsby speculated that “a general eight hour law such as passed by the Legislature in 1917, preceded by a like legislative declaration as to its intent and purpose would...stand as good as chance of being upheld” as H.B. 1. Consequently, the Alaska attorney general concluded that in order to avoid a court ruling that voided the entire bill, elimination of the aforementioned occupations bearing no direct relation to health or welfare “would leave the proposed Act unobjectionable.”250

Three days after Grigsby responded, Territorial Governor Riggs informed the Labor Committee chairman that he had received the following message from the Attorney General in Washington, A. Mitchell Palmer (to whom the chairmen had telegraphed the bill at Grigsby’s request)251:

Department unwilling to express its opinion as to whether proposed eight-hour bill will be held constitutional, but is willing to assure you that if lower court holds it unconstitutional, it will direct an appeal to be taken to the Supreme Court of the United States and will make every effort to uphold constitutionality of statute.252

As constitutionally more tenable bills wended their way through the legislature, negative pro-business voices began to be heard. The Alaska Daily Empire, which a year earlier had attacked the law (after Bunnell struck it down) for ban-

249 Letter from Attorney General George Grigsby to James Bogan and John Dunn at 11, 8.

250 Letter from Attorney General George Grigsby to James Bogan and John Dunn at 12-13 [as a result of a typo, page 11 and the following page are both paginated as page 11].

251 Report of Standing Committee (Apr. 12, 1919), in Records of the Territorial Legislature, Record Group 34, Series 30, Box 5180, Alaska State Archives; The Journal of the House of Representatives of the Fourth Legislative Assembly of the Territory of Alaska at 135.

252 Letter from Governor Thomas Riggs, Jr. to J. J. Bogan, chairman, House Committee on Labor, Capital and Immigration (Apr. 11, 1919), in Records of the Territorial Legislature, Record Group 34, Series 30, Box 5180, Alaska State Archives.
ning overtime work, now that the offending provision had been eliminated, discovered a new flaw: "where labor cost is the principal item in manufacturing cost, it is not practical to pay time and a half for overtime, because the cost of the manufactured article would thereby be forced so high that the selling price would have to be so advanced that the market would be destroyed." Some Alaska capitalists joined the Daily Empire in attacking what they regarded as "straight-jacket laws."

The substitute bill, as recommended by the Committee on Labor, Capital and Immigration and designed to accommodate Grigsby's criticisms and suggestions, passed the House 14-2 in April. Even this diluted bill, however, was defeated in the Senate 6-2, where some senators argued that it would destroy the fishing industry, "which pays most of the Territorial taxes." Representatives Dunn and Pennington introduced a second eight-hour bill designed to cover those industries (lumber yards, mercantile establishments, logging camps, offices, stores, express companies, telephone companies, laundries, hotels, and restaurants) coverage of which had been deemed questionable. It passed the House unanimously, but was defeated 6-2 in the Senate.

The pressure to deviate from the absolutist law of 1917 was further evidenced by Senate Bill No. 19, which was even titled, "An Act to establish a general eight hour day and to provide for the payment of overtime." It made eight hours a day's labor (except for farming and domestic service and hazardous occupations manufactured article would thereby be forced so high that the selling price would have to be so advanced that the market would be destroyed." Some Alaska capitalists joined the Daily Empire in attacking what they regarded as "straight-jacket laws."

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otherwise regulated) unless the employer and employee signed an agreement designating other hours as a day's labor, in which case an overtime premium was not statutorily required; only where they failed to sign such an agreement was time and one-half mandated for hours in excess of eight.260 It too was defeated 6-2.261 Yet another Senate bill, S.B. 54, limited overtime work (to be paid at time and a half) to making necessary repairs and emergencies when life or property was in imminent danger. Finding that “the recent actual experience of mankind” showed that “in general employment, longer hours of work in any one day than eight hours does not increase the amount of work done, but tends to impair the health and happiness of the individual, and render him less fit as a citizen and elector,” the bill declared it as the territory’s public policy to “promote the general health, physical well-being, and happiness of laborers by limiting” the workday to eight hours. However, the bill stated that this policy did not apply to certain industries by reason of climate, seasonality, or occasional employment; they included some of the territory’s biggest employers such as fishing and canning, longshoring, transportation, and placer mining.262 The fact that the bill passed the Senate 5-3263 reflected the influence of the fishing industry. Indeed, Senator James Heckman, who introduced the bill, was a “successful salmon packer” and merchant, who had been connected with the industry since 1888.264

The intensity of labor-capital conflict in the Senate was captured by its members’ reaction to a telegram sent to its chairman on April 22 by the mayor of Alaska’s leading fishing center, the extreme southern town of Ketchikan, the Deep Sea Fishermen’s Union, and a local of the Alaska Labor Union: “If Victory Loan to be success here eight hour bill Dunn-Pennington must pass with no restrictions political suicide for senators opposing so far as concerns labor.”265

260 Senate Bill No. 19 (Sen. Hess), in Records of the Territorial Legislature, Record Group 34, Series 30, Box 5180, Alaska State Archives. For the full text see “Hess Author of New 8-Hour Bill in Senate,” Alaska Daily Empire, Mar. 26, 1919, at 2, col. 3.


262 Senate Bill No. 54, §§ 1-3 (Sen. Heckman), in Records of the Territorial Legislature, Record Group 34, Series 30, Box 5180, Alaska State Archives. The Senate and House Journals in places refer to this bill as having been introduced by Sen. Frawley. The Senate Journal of the Fourth Legislative Assembly of the Territory of Alaska at 173; The Journal of the House of Representatives of the Fourth Legislative Assembly of the Territory of Alaska at 248, 350.

263 The Senate Journal of the Fourth Legislative Assembly of the Territory of Alaska at 117.


265 The Senate Journal of the Fourth Legislative Assembly of the Territory of Alaska at
The Senate immediately adopted a report of its special committee, which first characterized the "threat" as "a direct offer to purchase the vote of this body," and then initiated criminal prosecution:

We could overlook the efforts of the signers...to intimidate members of this body but when such an attempt at intimidation is accompanied with the intimation that the authors will oppose the success of the Victory Loan now offered by our Government, we cannot reach any other conclusion than that the parties thereto are making threats that very closely touch the border line of conspiracy or treason....

And we further recommend that the above telegram be turned over to the United States District Attorney to deal with as the law may direct.266

In contrast, labor's political strength in the House may have been decisive in the failure of the House and Senate conferees to agree on a final version.267 On the penultimate day of the legislative session, the House, by a vote of 12-4, amended Senate Bill No. 54 to reincorporate all the excluded occupations (except agriculture and domestic service),268 "Dunn and Pennington refusing to budge an inch. 'We will not yield a word,' said Mr. Pennington. Nor a 'coma [sic],' added Mr. Dunn."269 Thus ended the Alaska labor movement's attempt to achieve a state-enforced general eight-hour day.

In his annual report to the Interior Department Governor Riggs remarked that the eight-hour bills had failed to pass in 1919 because "too many toes were trodden" in an attempt to keep the bills as general as possible. The fish packers, for example, who were "the ones really aimed at," denied the possibility of an eight-hour day on the grounds that "when a run of fish is on plants must operate more hours to prevent the spoiling of the raw material; the fishermen themselves asserting their absolute inability to comply with an eight-hour law, for the reason

106.

266The Senate Journal of the Fourth Legislative Assembly of the Territory of Alaska at 107.

267Senate Bill No. 54, in Records of the Territorial Legislature, Record Group 109, 1919 Bill Docket, Alaska Senate, Alaska State Archives; The Journal of the House of Representatives of the Fourth Legislative Assembly of the Territory of Alaska at 318, 321, 322, 326; The Senate Journal of the Fourth Legislative Assembly of the Territory of Alaska at 150; "Eight Hour Bill Is Passed by the Senate Members," "Measures for 8-Hour Day in Hopeless Shape," Alaska Daily Empire, Apr. 30, 1919, at 2, col. 5.

268The Journal of the House of Representatives of the Fourth Legislative Assembly of the Territory of Alaska at 264, 300.

269"Fourth Legislature Comes to an End After Being in Session for 33 Hours, Making Record for Alaska Sittings," Alaska Daily Empire, May 2, 1919, at 1, col. 1, 2. Wickersham, who did not mention passage of the eight-hour law in 1917 in his diaries, happened to be in Juneau the day after the legislature adjourned and noted that it had "failed to pass any 8 Hour Law...." Wickersham "Diaries," May 3, 1919.
that almost all of them are share workers.” Ironically, the governor concluded his account by observing that many industries had voluntarily adopted the eight-hour day with success.270

The forces pushing for some kind of hours regulation did not abandon their efforts. At the fifth legislative session in 1921 they undertook a more cautious overtime initiative. Although it, too, applied to adult men, House Bill No. 6 from the outset confined its scope to any mill, saw mill, factory, laundry, manufacturing establishment, or open-cut or open-pit quarry or mine. It was also more circumspect in attempting to anticipate any judicially constructed constitutional obstacles to hours regulation. Unlike earlier bills, it stated that “climatic and living conditions” in Alaska made employment in the named industries for more than eight hours a day “injurious to the health of both men and women...and greatly increase the likelihood of injury....” The bill then characterized these facts as justifying the territory’s “exercise of its police power...to discourage the employment” of men or women in those industries for more than eight hours.271

The bill sought to insure judicial approval by offering employers even more daily overtime than the Oregon law, which permitted three hours and was upheld by the U.S. Supreme Court. H.B. 6 permitted employees to work as many as four hours of overtime at time and one-half.272 Finally, the bill made each violation of the act a misdemeanor punishable by a fine of between $100 and $500 or imprisonment in federal jail for a period of between 30 days and six months.273

In the course of further deliberations, the bill’s scope was expanded by inclusion of surface placer mines. In addition, for the first time an Alaska overtime bill made payment of overtime wages a civil obligation enforceable in a contract action.274 Immediately before the House of Representatives passed the bill with these amendments by a vote of 15 to 1, it received the attorney general’s opinion as to its constitutionality. Despite the strong similarity to the Oregon law, he viewed the bill as “certainly very close to the line....” He thought that “the chances are that it will be upheld but we have nothing to spare, because it must be remembered that we have the history of legislation on the eight hour question


271 Territory of Alaska, Fifth Session, House Bill No. 6, § 1, in Record Group 01, Ser. 30, Box 5181 (Legislative Bills and Resolutions, 1921-25), Alaska State Archives. Rep. George Getchell, who introduced the bill, had been a mining engineer and became Juneau’s chief of police after leaving the House. Who’s Who in Alaska Politics at 34.

272 House Bill No. 6, § 2.

273 H.B. 6, § 3.

274 The Journal of the House of Representatives of the Fifth Legislative Assembly of the Territory of Alaska 169 (1921).
against us in this Territory in our effort to uphold the validity of the law."

In the Senate, Luther Hess, vice president of the First National Bank of Fairbanks and "one of the most extensive holders of mining ground in the whole territory," introduced as a substitute for H.B. 6 an even more permissive version of his unsuccessful overtime bill (S.B. 19) from the previous session. Whereas the earlier bill at least mandated time and a half for overtime work beyond eight hours daily where the employer failed to obtain its employees' signature to an agreement stipulating to a longer workday, Hess's new bill merely required employers, in the absence of such an agreement, to pay overtime wages "at the rate of wages agreed upon; or if there is no agreement as to wages, at the rate of wages paid for like service in the community where the labor was performed." This watered down version of an already diluted overtime bill passed the Senate by an overwhelming 7-1 majority.

Although even the House overtime bill was far removed from the radical intervention in the labor market embodied in the 1917 law, the Senate bill constituted such a meaningless labor standard that it was no surprise that the House voted 11-4 not to concur in it. A conference committee was unable to reach agreement, but a free conference committee (of which neither the House nor Senate bill author was a member) voted 5-1 in favor of the Senate substitute. The agreement, however, was short-lived: the whole House disavowed its own managers, voting 9-5 against the Senate substitute, thus bringing to a close eight years of efforts to legislate the eight-hour day in Alaska.

After the defeat of the initiatives of 1917, 1919, and 1921, no eight-hour bill was introduced during the 1923 session. Not only did Alaska's legislature never again enact a general absolute eight-hour law, it did not even enact an overtime law until 1955. And so far removed from workers' and legislators' concerns

275 The Journal of the House of Representatives of the Fifth Legislative Assembly of the Territory of Alaska at 179.


277 Territory of Alaska, Fifth Session, In the Senate, Substitute for House Bill No. 6, § 2 (Rep. Hess), in Record Group 01, Ser. 30, Box 5181 (Legislative Bills and Resolutions, 1921-25), Alaska State Archives.

278 The Senate Journal of the Fifth Legislative Assembly of the Territory of Alaska 173 (1921).

279 The Journal of the House of Representatives of the Fifth Legislative Assembly of the Territory of Alaska at 242.

280 Unlike a conference committee, a free conference committee is free to suggest new amendments that are clearly germane.

281 The Journal of the House of Representatives of the Fifth Legislative Assembly of the Territory of Alaska 308-309, 360.

282 1955 Alaska Sess. Laws, ch. 185 at 372 (providing for time and a half for hours
of those early years is the current overtime law that—despite its unusual retention of Alaska’s quondam tradition of mandating premium pay after eight hours per day—its express public policy fails to make any reference to the goal of a shorter workday. Instead, the legislative policy has been diluted to a mere matter of money—namely, “to establish...overtime compensation standards for workers at levels consistent with their health, efficiency and general well-being.”
