301 U.S. 1

NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORPORATION.

No. 419.

Argued Feb. 10, 11, 1937.

Decided April 12, 1937.

1. Master and servant ⇐15

In a proceeding under the National Labor Relations Act on charges that defendant violated the act by engaging in unfair labor practices affecting commerce, where defendant did not take advantage of its opportunity to present evidence to refute that offered to show discrimination and coercion, and the findings of the Board that employees were discharged because of union activity and to discourage membership in the union were supported by evidence, there was no ground for setting aside the order of the Board so far as the facts were concerned (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.).

2. Commerce ⇐7

Authority of the federal government over interstate commerce may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce among the several states and the internal concerns of the state (Const. Amend. 10).

3. Statutes ⇐205

Courts may not deny effect to specific provisions of the National Labor Relations Act which Congress had constitutional power to enact by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.).

4. Constitutional law ⇐48

As between two possible interpretations of a statute, by one of which it would be unconstitutional, and by the other valid, it is the plain duty of the courts to adopt that which will save the act, and, even to avoid a serious doubt, the rule is the same.

5. Constitutional law ⇐48

National Labor Relations Act empowering the National Labor Relations Board to prevent any person from engaging in unfair labor practices affecting commerce as therein defined may be construed so as to operate within the sphere of constitutional authority as it purports to reach only what may be deemed to burden or obstruct interstate or foreign commerce, and thus qualified must be construed as contemplating the exercise of control within constitutional bounds (National Labor Relations Act of 1935, §§ 2, 10, 29 U.S.C.A. §§ 151 et seq., 152 (6, 7), 160; Const. Amend. 5).

6. Commerce ⇐16

Acts which directly burden or obstruct interstate or foreign commerce or its free flow are within the reach of congressional power and are not rendered immune because they grow out of labor disputes.

7. Master and servant ⇐16

National Labor Relations Act, so far as it safeguards the right of employees to self-organization and to select representatives of their own choosing for collective bargaining, or other mutual protection, without restraint or coercion by their employer, does not invade the constitutional rights of employers and employees (National Labor Relations Act of 1935, §§ 7, 8, 29 U.S.C.A. §§ 157, 158; Const. Amend. 5).

8. Commerce ⇐16

Congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a flow of interstate or foreign commerce, and burdens and obstructions may be due to injurious action springing from other sources.

9. Commerce ⇐1

Power to regulate commerce is a power to enact all appropriate legislation for its protection or advancement, to adopt measures to promote its growth and insure its safety, and to foster, protect, control, and restrain.

10. Commerce ⇐5

Power of Congress to regulate commerce is plenary and may be exerted to protect interstate commerce no matter what the source of the dangers which threaten it.

11. Commerce ⇐16

Though activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their con-

trol is essential or appropriate to protect that commerce from burdens and obstructions, Congress has power to exercise that control.

12. Commerce ⇐16

Powers of Congress to regulate commerce may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them would effectually obliterate the distinction between what is national and what is local, and create a completely centralized government, the question necessarily being one of degree.

13. Commerce ⇐43

Manufacturing operations of a large steel company organized on a national scale and drawing raw materials from various other states and shipping out the finished product to all parts of the nation *held* to have such close and intimate relation to "interstate commerce" that Congress had constitutional authority to safeguard the rights of its employees to self-organization and freedom in the choice of representatives for collective bargaining as was done by the National Labor Relations Act (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.).

14. Constitutional law ⇐275(1)
Master and servant ⇐16

National Labor Relations Act, so far as it restrains employers for the purpose of preventing an unjust interference with the right of employees to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work, is not an arbitrary or capricious restraint on the employer's right to conduct his business within the due process clause and other constitutional restrictions (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.; Const. Amend. 5).

15. Master and servant ⇐16

Provision of National Labor Relations Act that representatives designated or selected for purpose of collective bargaining by majority of employees in unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, is designed only to prevent collective bargaining with any one purporting to represent employees other than the representatives selected, and does not preclude such individual contracts as employer may elect to make directly with individual employees (National Labor Relations Act of 1935, § 9 (a), 29 U.S.C.A. § 159(a).

16. Master and servant ⇐16

National Labor Relations Act does not compel agreements between employers and employees or any agreement whatever, or prevent the employer from refusing to make a collective contract and hiring individuals on whatever terms the employer may by unilateral action determine, but proceeds on the theory that free opportunity for negotiation is likely to promote industrial peace and bring about adjustments and agreements, which the act in itself does not attempt to compel (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.).

17. Master and servant ⇐16

That the National Labor Relations Act is claimed to be one-sided in its application and to subject the employer to supervision and restraint, and leave untouched abuses for which employees may be responsible, does not affect the power of Congress to enact it, as the legislative authority exerted within its proper field need not embrace all evils within its reach (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.).

18. Master and servant ⇐16

National Labor Relations Act establishing standards to which the National Labor Relations Board must conform, requiring complaint, notice, and hearing, requiring the Board to receive evidence and make findings which are to be conclusive only if supported by evidence, and providing for review of the order of the Board by a designated court when all questions of jurisdiction, regularity of proceeding, and questions of constitutional right or statutory authority are open to examination, affords adequate opportunity to secure judicial protection against arbitrary action and is not unconstitutional with respect to its procedural provisions (National Labor Relations Act of 1935, 29 U.S.C.A. § 151 et seq.; Const. art. 3, § 2; Amend. 5).

19. Master and servant ⇐15

Order of National Labor Relations Board requiring employer to reinstate employees discharged because of union activities and for the purpose of discouraging

membership in the union *held* authorized by statute (National Labor Relations Act of 1935, § 10(c), 29 U.S.C.A. § 160(c).

20. Master and servant ⇐16

National Labor Relations Act, so far as it authorizes National Labor Relations Board to require reinstatement of employees discharged in violation of provisions of the statute, *held* within the power of the Congress (National Labor Relations Act of 1935, § 10(c), 29 U.S.C.A. § 160(c).

21. Jury ⇐19(1)

National Labor Relations Act, in authorizing National Labor Relations Board to require reinstatement of employees discharged in violation of the statute, and to direct payment of wages for time lost by the discharge, does not violate constitutional right of trial by jury, as the Constitution preserves the right which existed under the common law when the Amendment to the Constitution was adopted and a proceeding under the statute is a statutory proceeding unknown to the common law (National Labor Relations Act of 1935, § 10 (c), 29 U.S.C.A. § 160(c); Const. Amend. 7).

Mr. Justice McREYNOLDS, Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER, dissenting.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

Proceeding by the National Labor Relations Board against the Jones & Laughlin Steel Corporation for enforcement of an order of the Board. The petition was denied by the Circuit Court of Appeals [83 F.(2d) 998], and the petitioner brings certiorari.

Reversed and remanded.

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Messrs. Homer S. Cummings, Atty. Gen., and Stanley F. Reed, Sol. Gen., and J. Warren Madden, both of Washington, D. C., for petitioner.

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Mr. Earl F. Reed, of Pittsburgh, Pa., for respondent.

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Mr. Chief Justice HUGHES delivered the opinion of the Court.

In a proceeding under the National Labor Relations Act of 1935[1] the National Labor Relations Board found that the respondent, Jones & Laughlin Steel Corporation, had violated the act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the Beaver Valley Lodge No. 200, affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of America, a labor organization. The unfair labor practices charged were that the corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its employees in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employees.

The National Labor Relations Board, sustaining the charge, ordered the corporation to cease and desist from such discrimination and coercion, to offer reinstatement to ten of the employees named, to make good their losses in pay, and to post for thirty days notices that the corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. As the corporation failed to comply, the Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition holding that the order lay beyond the range of federal power. 83 F.(2d) 998. We granted certiorari. 299 U.S. 534, 57 S.Ct. 119, 81 L.Ed. —.

The scheme of the National Labor Relations Act—which is too long to be quoted in full—may be briefly stated. The first section (29 U.S.C.A. § 151) sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of col

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lective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce.[2] The act

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then defines the terms it

[1] Act of July 5, 1935, 49 Stat. 449, 29 U.S.C. § 151 et seq. (29 U.S.C.A. § 151 et seq.).

[2] This section is as follows:

"Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing

uses, including the terms "commerce" and "affecting commerce." Section 2 (29 U.S.C.A. § 152). It creates the National Labor Relations Board and prescribes its organization. Sections 3–6 (29 U.S.C.A. §§ 153–156). It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing. Section 7 (29 U.S.C.A. § 157). It defines "unfair labor practices." Section 8 (29 U.S.C.A. § 158). It lays down rules as to the representation of employees for the purpose of collective bargaining. Section 9 (29 U.S.C.A. § 159). The Board is empowered to prevent the described unfair labor practices affecting commerce and the act prescribes the procedure to that end. The Board is authorized to petition designated courts to secure the enforcement of its order. The findings of the Board as to the facts, if supported by evidence, are to be conclusive. If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the Board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order. Section 10 (29 U.S.C.A. § 160). The Board has broad powers of investigation. Section 11 (29 U.S.C.A. § 161). Interference with members of the Board or its agents in the performance of their duties is punishable by fine and imprisonment. Section 12 (29 U.S.C.A. § 162). Nothing in the act is to be construed to interfere with the right to strike. Section 13 (29 U.S.C.A. § 163). There is a separability clause to the effect that, if any provision of the act or its application to any person or circumstances shall be held invalid, the remainder of the act or its application to other persons or circumstances shall not be affected. Section 15 (29 U.S.C.A. § 165). The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

The procedure in the instant case followed the statute. The labor union filed with the Board its verified charge.

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The Board thereupon issued its complaint against the respondent, alleging that its action in discharging the employees in question constituted unfair labor practices affecting commerce within the meaning of section 8, subdivisions (1) and (3), and section 2, subdivisions (6) and (7), of the act. Respondent, appearing specially for the purpose of

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the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C.A. § 151.

objecting to the jurisdiction of the Board, filed its answer. Respondent admitted the discharges, but alleged that they were made because of inefficiency or violation of rules or for other good reasons and were not ascribable to union membership or activities. As an affirmative defense respondent challenged the constitutional validity of the statute and its applicability in the instant case. Notice of hearing was given and respondent appeared by counsel. The Board first took up the issue of jurisdiction and evidence was presented by both the Board and the respondent. Respondent then moved to dismiss the complaint for lack of jurisdiction and, on denial of that motion, respondent in accordance with its special appearance withdrew from further participation in the hearing. The Board received evidence upon the merits and at its close made its findings and order.

Contesting the ruling of the Board, the respondent argues (1) that the act is in reality a regulation of labor relations and not of interstate commerce; (2) that the act can have no application to the respondent's relations with its production employees because they are not subject to regulation by the federal government; and (3) that the provisions of the act violate section 2 of article 3 and the Fifth and Seventh Amendments of the Constitution of the United States.

The facts as to the nature and scope of the business of the Jones & Laughlin Steel Corporation have been found by the Labor Board, and, so far as they are essential to the determination of this controversy, they are not in dispute. The Labor Board has found: The corporation is

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organized under the laws of Pennsylvania and has its principal office at Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and nearby Aliquippa, Pa. It manufactures and distributes a widely diversified line of steel and pig iron, being the fourth largest producer of steel in the United States. With its subsidiaries—nineteen in number—it is a completely integrated enterprise, owning and operating ore, coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants. It owns or controls mines in Michigan and Minnesota. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns coal mines in Pennsylvania. It operates towboats and steam barges used in carrying coal to its factories. It owns limestone properties in various places in Pennsylvania and West Virginia. It owns the Monongahela connecting railroad which connects the plants of the Pittsburgh works and forms an interconnection with the Pennsylvania, New York Central and Baltimore & Ohio Railroad systems. It owns the Aliquippa & Southern Railroad Company, which connects the Aliquippa works with the Pittsburgh & Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati and Memphis,—to the last two places by means of its own barges and transportation equipment. In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semifinished materials sent from its works. Through one of its wholly-owned subsidiaries it owns, leases, and operates stores, warehouses, and yards for the distribution of equipment and supplies for drilling and operating oil and gas wells and for pipe lines, refineries and pumping stations. It has sales offices in

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twenty cities in the United States and a wholly-owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent. of its product is shipped out of Pennsylvania.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa "might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated."

To carry on the activities of the entire steel industry, 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Respondent points to evidence that the Aliquippa plant, in which the discharged

men were employed, contains complete facilities for the production of finished and semifinished iron and steel products from raw materials; that its works consist primarily of a by-product coke plant for the production of coke; blast furnaces for the production of pig iron; open hearth furnaces and Bessemer converters for the production of steel; blooming mills for the reduction of steel ingots into smaller shapes; and a number of finishing mills such as structural mills, rod mills, wire mills, and the like. In addition, there are other buildings, structures and equipment, storage yards, docks and an intraplant storage system. Respondent's operations at these works are carried on in two distinct stages, the first being the conversion of raw materials into pig

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iron and the second being the manufacture of semifinished and finished iron and steel products; and in both cases the operations result in substantially changing the character, utility and value of the materials wrought upon, which is apparent from the nature and extent of the processes to which they are subjected and which respondent fully describes. Respondent also directs attention to the fact that the iron ore which is procured from mines in Minnesota and Michigan and transported to respondent's plant is stored in stock piles for future use, the amount of ore in storage varying with the season but usually being enough to maintain operations from nine to ten months; that the coal which is procured from the mines of a subsidiary located in Pennsylvania and taken to the plant at Aliquippa is there, like ore, stored for future use, approximately two to three months' supply of coal being always on hand; and that the limestone which is obtained in Pennsylvania and West Virginia is also stored in amounts usually adequate to run the blast furnaces for a few weeks. Various details of operation, transportation, and distribution are also mentioned which for the present purpose it is not necessary to detail.

Practically all the factual evidence in the case, except that which dealt with the nature of respondent's business, concerned its relations with the employees in the Aliquippa plant whose discharge was the subject of the complaint. These employees were active leaders in the labor union. Several were officers and others were leaders of particular groups. Two of the employees were motor inspectors; one was a tractor driver; three were crane operators; one was a washer in the coke plant; and three were laborers. Three other employees were mentioned in the complaint but it was withdrawn as to one of them and no evidence was heard on the action taken with respect to the other two.

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While respondent criticizes the evidence and the attitude of the Board, which is described as being hostile toward employers and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the Board so far as the facts pertaining to the circumstances and purpose of the discharge of the employees are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the Board that respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union." We turn to the questions of law which respondent urges in contesting the validity and application of the act.

First. The Scope of the Act.—The act is challenged in its entirety as an attempt to regulate all industry, thus invading the reserved powers of the States over their local concerns. It is asserted that the references in the act to interstate and foreign commerce are colorable at best; that the act is not a true regulation of such commerce or of matters which directly affect it, but on the contrary has the fundamental object of placing under the compulsory supervision of the federal government all industrial labor relations within the nation. The argument seeks support in the broad words of the preamble (section 1[3]) and in the sweep of the provisions of the act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

[2] If this conception of terms, intent and consequent inseparability were sound, the act would necessarily fall

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by reason of

[3] See note 2.

the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth Amendment. Schechter Corporation v. United States, 295 U. S. 495, 549, 550, 554, 55 S.Ct. 837, 851, 853, 79 L.Ed. 1570, 97 A.L.R. 947. The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a state. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system. Id.

[3, 4] But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same. Federal Trade Commission v. American Tobacco Co., 264 U.S. 298, 307, 44 S.Ct. 336, 337, 68 L.Ed. 696, 32 A.L.R. 786; Panama R. R. Co. v. Johnson, 264 U. S. 375, 390, 44 S.Ct. 391, 395, 68 L.Ed. 748; Missouri Pacific R. R. Co. v. Boone, 270 U.S. 466, 472, 46 S.Ct. 341, 343, 70 L.Ed. 688; Blodgett v. Holden, 275 U.S. 142, 148, 276 U.S. 594, 48 S.Ct. 105, 107, 72 L.Ed. 206; Richmond Screw Anchor Co. v. United States, 275 U.S. 331, 346, 48 S.Ct. 194, 198, 72 L.Ed. 303.

[5] We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in section 10(a), 29 U.S.C.A. § 160(a), which provides:

"Sec. 10(a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158]) affecting commerce."

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The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are "affecting commerce." The act specifically defines the "commerce" to which it refers (section 2(6), 29 U.S.C.A. § 152(6):

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

There can be no question that the commerce thus contemplated by the act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The act also defines the term "affecting commerce" section 2(7), 29 U.S.C.A. § 152(7):

"The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

[6] This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not

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rendered immune because they grow out of labor disputes. See Texas & N. O. R. Co. v. Railway & S. S. Clerks, 281 U.S. 548, 570, 50 S.Ct. 427, 433, 434, 74 L.Ed. 1034; Schechter Corporation v. United States, supra, 295 U.S. 495, at pages 544, 545, 55 S.Ct. 837, 849, 79 L.Ed. 1570, 97 A.L.R. 947; Virginian Railway Co. v. System Federation No. 40, 300

U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789, decided March 29, 1937. It is the effect upon commerce, not the source of the injury, which is the criterion. Second Employers' Liability Cases (Mondou v. New York, N. H. & H. R. Co.), 223 U.S. 1, 51, 32 S.Ct. 169, 56 L.Ed. 327, 38 L.R.A.(N.S.) 44. Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control, and hence to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed.

[7] *Second. The Unfair Labor Practices in Question.*—The unfair labor practices found by the Board are those defined in section 8, subdivisions (1) and (3). These provide:

"Sec. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]. * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."[4]

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Section 8, subdivision (1), refers to section 7, which is as follows:

"Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment: that union was essential to give laborers opportunity to deal on an equality with their employer. American Steel Foundries v. Tri-City Central Trades Council, 257 U.S. 184, 209, 42 S.Ct. 72, 78, 66 L.Ed. 189, 27 A.L.R. 360. We reiterated these views when we had under consideration the Railway Labor Act of 1926, 44 Stat. 577. Fully recognizing the legality of collective action on the part of employees in

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order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotia-

[4] What is quoted above is followed by this proviso—not here involved—"Provided, That nothing in this Act [chapter], or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701–712), as amended from time to time [sections 701 to 712 of Title 15], or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act [chapter] as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) [section 159 (a) of this title], in the appropriate collective bargaining unit covered by such agreement when made."

tion and conference between employers and employees, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." Texas & N. O. R. Co. v. Railway & S. S. Clerks, supra. We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934 (45 U.S.C.A. § 151 et seq.). Virginian Railway Co. v. System Federation, No. 40, supra.

Third. The Application of the Act to Employees Engaged in Production.—The Principle Involved.—Respondent says that, whatever may be said of employees engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not subject to federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce. Kidd v. Pearson, 128 U.S. 1, 20, 21, 9 S.Ct. 6, 32 L.Ed. 346; United Mine Workers v. Coronado Co., 259 U.S. 344, 407, 408, 42 S.Ct. 570, 581, 582, 66 L.Ed. 975, 27 A.L.R. 762; Oliver Iron Co. v. Lord, 262 U.S. 172, 178, 43 S.Ct. 526, 529, 67 L.Ed. 929; United Leather Workers' International Union v. Herkert & Meisel Trunk Co., 265 U.S. 457, 465, 44 S.Ct. 623, 625, 68 L.Ed. 1104, 33 A.L.R. 566; Industrial Association v. United States, 268 U.S. 64, 82, 45 S.Ct. 403, 407, 69 L.Ed. 849; Coronado Coal Co. v. United Mine Workers, 268 U.S. 295, 310, 45 S.Ct. 551, 556, 69 L.Ed. 963; Schechter Corporation v. United States, supra, 295 U.S. 495, at page 547, 55 S.Ct. 837, 850, 79 L.Ed. 1570, 97 A.L.R. 947; Carter v. Carter Coal Co., 298 U.S. 238, 304, 317, 327, 56 S.Ct. 855, 869, 875, 880, 80 L.Ed. 1160.

The government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving "a great movement of

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iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country—a definite and well-understood course of business." It is urged that these activities constitute a "stream" or "flow" of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the Packers and Stockyards Act.[5] Stafford v. Wallace, 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735, 23 A.L.R. 229. The Court found that the stockyards were but a "throat" through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for, while they created "a local change of title," they did not "stop the flow," but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the state to impose a nondiscriminatory tax upon property which the owner intended to transport to another state, but which was not in actual transit and was held within the state subject to the disposition of the owner, the Court remarked: "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority." Id., 258 U.S. 495, at page 526, 42 S.Ct. 397, 405, 66 L.Ed. 735, 23 A.L.R. 229. See Minnesota v. Blasius, 290 U.S. 1, 8, 54 S.Ct. 34, 36, 78 L.Ed. 131. Applying the doctrine of Stafford v. Wallace, supra, the Court sustained the Grain Futures Act of 1922[6] with respect to transactions on the Chicago Board of Trade, although these transactions were "not in and of themselves interstate commerce." Congress had found

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that they had become "a constantly recurring burden and obstruction to that commerce." Board of Trade of City of Chicago v. Olsen, 262 U.S. 1, 32, 43 S.Ct. 470, 476, 67 L.Ed. 839. Compare Hill v. Wallace, 259 U.S. 44, 69, 42 S.Ct. 453, 458, 66 L.Ed. 822. See, also, Tagg Bros. & Moorhead v. United States, 280 U.S. 420, 50 S.Ct. 220, 74 L.Ed. 524.

Respondent contends that the instant case presents material distinctions. Respondent says that the Aliquippa plant is extensive in size and represents a large investment in buildings, machinery and equipment. The raw materials which are brought to the plant are delayed for long

[5] 42 Stat. 159 (7 U.S.C.A. § 181 et seq.).

[6] 42 Stat. 998 (7 U.S.C.A. §§ 1–17).

periods and, after being subjected to manufacturing processes "are changed substantially as to character, utility and value." The finished products which emerge "are to a large extent manufactured without reference to pre-existing orders and contracts and are entirely different from the raw materials which enter at the other end." Hence respondent argues that, "If importation and exportation in interstate commerce do not singly transfer purely local activities into the field of congressional regulation, it should follow that their combination would not alter the local situation." Arkadelphia Milling Co. v. St. Louis, Southwestern R. Co., 249 U.S. 134, 151, 39 S.Ct. 237, 63 L. Ed. 517; Oliver Iron Co. v. Lord, supra.

[8-12] We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the "stream of commerce" cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the government invokes in support of the present act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is

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the power to enact "all appropriate legislation" for its "protection or advancement" (The Daniel Ball, 10 Wall. 557, 564, 19 L.Ed. 999); to adopt measures "to promote its growth and insure its safety" (County of Mobile v. Kimball, 102 U.S. 691, 696, 697, 26 L.Ed. 238); "to foster, protect, control, and restrain." (Second Employers' Liability Cases, supra, 223 U.S. 1, at page 47, 32 S.Ct. 169, 174, 56 L.Ed. 327, 38 L.R.A. [N.S.] 44). See Texas & N. O. R. Co. v. Railway & S. S. Clerks, supra. That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it." Second Employers' Liability Cases, 223 U.S. 1, at page 51, 32 S.Ct. 169, 176, 56 L.Ed. 327, 38 L.R.A.(N.S.) 44; Schechter Corporation v. United States, supra. Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. Schechter Corporation v. United States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree. As the Court said in Board of Trade of City of Chicago v. Olsen, supra, 262 U.S. 1, at page 37, 43 S.Ct. 470, 477, 67 L.Ed. 839, repeating what had been said in Stafford v. Wallace, supra: "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it."

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who

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are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. The Shreveport Case (Houston, E. & W. T. R. Co. v. United States), 234 U.S. 342, 351, 352, 34 S.Ct. 833, 58 L.Ed. 1341; Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 257 U.S. 563, 588, 42 S.Ct. 232, 237, 66 L.Ed. 371, 22 A.L.R. 1086. It is manifest that intrastate rates deal *primarily* with a local activity. But in rate making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. Id. Under the Transportation Act, 1920,[7] Congress went so far as to authorize the Interstate

[7] Sections 416, 422, 41 Stat. 484, 488 (49 U.S.C.A. §§ 13, 15a); Interstate Commerce Act, § 13 (4), 49 U.S.C.A. § 13(4).

Commerce Commission to establish a statewide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. Railroad Commission of Wisconsin v. Chicago, B. & Q. R. R. Co., supra; Florida v. United States, 282 U.S. 194, 210, 211, 51 S.Ct. 119, 123, 75 L.Ed. 291. Other illustrations are found in the broad requirements of the Safety Appliance Act (45 U.S.C.A. §§ 1–10) and the Hours of Service Act (45 U.S.C.A. §§ 61–64). Southern Railway Co. v. United States, 222 U.S. 20, 32 S.Ct. 2, 56 L.Ed. 72; Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission, 221 U.S. 612, 31 S.Ct. 621, 55 L.Ed. 878. It is said that this exercise of federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal Anti-Trust Act (15 U.S.C.A. §§ 1–7, 15 note). In the Standard Oil and American Tobacco Cases (Standard Oil Co. v. United States), 221 U.S. 1, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734; (United States v. American Tobacco Co.) 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663), that statute was applied to combinations of employers engaged in productive industry.

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Counsel for the offending corporations strongly urged that the Sherman Act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U.S. 1, at page 5, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734; 221 U.S. 106, at page 125, 31 S.Ct. 632, 55 L.Ed. 663. Counsel relied upon the decision in United States v. E. C. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325. The Court stated their contention as follows: "That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject dehors the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the states." And the Court summarily dismissed the contention in these words: "But all the structure upon which this argument proceeds is based upon the decision in United States v. E. C. Knight Co., 156 U.S. 1, 15 S.Ct. 249, 39 L.Ed. 325. The view, however, which the argument takes of that case, and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice" (citing cases). 221 U.S. 1, at pages 68, 69, 31 S.Ct. 502, 519, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann.Cas.1912D, 734.

Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. Loewe v. Lawlor, 208 U.S. 274, 28 S.Ct. 301, 52 L.Ed. 488, 13 Ann.Cas. 815; Coronado Coal Co. v. United Mine Workers, supra; Bedford Cut Stone Co. v. Stone Cutters' Association, 274 U.S. 37, 47 S.Ct. 522, 71 L.Ed. 916, 54 A.L.R. 791. See, also, Local 167, International Brotherhood of Teamsters v. United States, 291 U.S. 293, 297, 54 S.Ct. 396, 398, 78 L.Ed. 804; Schechter Corporation v. United States, supra. The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus, in the first Coronado Case, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such,

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and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Anti-Trust Act, notwithstanding the broad terms of that statute. A similar conclusion was reached in United Leather Workers' International Union v. Herkert & Meisel Trunk Co., supra, Industrial Association v. United States, supra, and Levering & Garrigues v. Morrin, 289 U.S. 103, 107, 53 S.Ct. 549, 550, 77 L.Ed. 1062. But in the first Coronado Case the Court also said that "if Congress deems certain recurring practices though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to

subject them to national supervision and restraint." 259 U.S. 344, at page 408, 42 S.Ct. 570, 582, 66 L.Ed. 975, 27 A.L.R. 762. And in the second Coronado Case the Court ruled that, while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the "intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act." 268 U.S. 295, at page 310, 45 S.Ct. 551, 556, 69 L.Ed. 963. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct. Industrial Association v. United States, 268 U.S. 64, at page 81, 45 S.Ct. 403, 407, 69 L.Ed. 849. What was absent from the evidence in the first Coronado Case appeared in the second and the act was accordingly applied to the mining employees.

It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. In the Schechter Case, supra, we found that the effect there was so remote as to be beyond the federal power. To find "immediacy or directness" there was to find it "almost

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everywhere," a result inconsistent with the maintenance of our federal system. In the Carter Case, supra, the Court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds,—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process. These cases are not controlling here.

[13] *Fourth. Effects of the Unfair Labor Practice in Respondent's Enterprise.*— Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical

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conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of Virginian Railway Co. v. System Federation No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act, "when there was no dispute as to the organizations authorized to represent the employees, and when there was willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided." That, on the other hand, "a prolific source

of dispute had been the maintenance by the railroads of company unions and the denial by railway management of the authority of representatives chosen by their employees." The opinion in that case also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But, with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

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These questions have frequently engaged the attention of Congress and have been the subject of many inquiries.[8] The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences.[9] The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall. It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self-organization and freedom in the choice of representatives for collective bargaining.

[14, 15] *Fifth. The Means Which the Act Employs.—Questions under the Due Process Clause and Other Constitutional Restrictions.*—Respondent asserts its right to conduct its business in an orderly manner without being subjected to arbitrary restraints. What we have said points to the fallacy in the argument. Employees have their correlative

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right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. Texas & N. O. R. Co. v. Railway S. S. Clerks, supra; Virginian Railway Co. v. System Federation No. 40. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. The provision of section 9 (a) [10] that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit, imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute. This provision has its analogue in section 2, Ninth, of the Railway Labor Act, as amended (45 U.S. C.A. § 152, subd. 9), which was under consideration in Virginian Railway Co. v. System Federation No. 40, supra. The decree which we affirmed in that case required the railway company to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with any one other than their true representative as ascertained in accordance with the provisions of the act. We said that the obligation to treat with

[8] See, for example, Final Report of the Industrial Commission (1902), vol. 19, p. 844; Report of the Anthracite Coal Strike Commission (1902), Sen.Doc. No. 6, 58th Cong., Spec.Sess.; Final Report of Commission on Industrial Relations (1916), Sen.Doc. No. 415, 64th Cong., 1st Sess., vol. 1; National War Labor Board, Principles and Rules of Procedure (1919), p. 4; Bureau of Labor Statistics, Bulletin No. 287 (1921), pp. 52–64; History of the Shipbuilding Labor Adjustment Board, U. S. Bureau of Labor Statistics, Bulletin No. 283.

[9] See Investigating Strike in Steel Industries, Sen.Rep. No. 289, 66th Cong., 1st Sess.

[10] The provision is as follows: "Sec. 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer." 29 U.S.C.A. § 159(a).

the true representative was exclusive and hence imposed the negative duty to treat with no other. We also pointed out that, as conceded by the government,[11] the injunc

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tion against the company's entering into any contract concerning rules, rates of pay and working conditions except with a chosen representative was "designed only to prevent collective bargaining with any one purporting to represent employees" other than the representative they had selected. It was taken "to prohibit the negotiation of labor contracts, generally applicable to employees" in the described unit with any other representative than the one so chosen, "but not as precluding such individual contracts" as the company might "elect to make directly with individual employees." We think this construction also applies to section 9 (a) of the National Labor Relations Act (29 U.S.C.A. § 159 (a).

[16] The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer "from refusing to make a collective contract and hiring individuals on whatever terms" the employer "may by unilateral action determine." [12] The act expressly provides in section 9 (a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel. As we said in Texas & N. O. R. Co. v. Railway & S. S. Clerks, supra, and repeated in Virginian Railway Co. v. System Federation No. 40, the cases of Adair v. United States, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764, and Coppage v. Kansas, 236 U.S. 1, 35 S. Ct. 240, 59 L.Ed. 441, L.R.A.1915C, 960, are inapplicable to legislation of this character. The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their

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self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

[17] The act has been criticized as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible; that it fails to provide a more comprehensive plan,—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll v. Greenwich Insurance Co., 199 U.S. 401, 411, 26 S.Ct. 66, 50 L.Ed. 246; Keokee Coke Co. v. Taylor, 234 U.S. 224, 227, 34 S.Ct. 856, 58 L.Ed. 1288; Miller v. Wilson, 236 U. S. 373, 384, 35 S.Ct. 342, 59 L.Ed. 628, L.R.A.1915F, 829; Sproles v. Binford, 286 U.S. 374, 396, 52 S.Ct. 581, 588, 76 L.Ed. 1167. The question in such cases is whether the Legislature, in what it does prescribe, has gone beyond constitutional limits.

[18] The procedural provisions of the act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing

[11] See Virginian Railway Co. v. System Federation No. 40, 300 U.S. 515, 57 S.Ct. 592, 600, 81 L.Ed. 789, note 6, decided March 29, 1937.

[12] See note 11.

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creation and action of administrative bodies. See Interstate Commerce Commission v. Louisville & Nashville R. Co., 227 U.S. 88, 91, 33 S.Ct. 185, 57 L.Ed. 431. The act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. It is not necessary to repeat these rules which have frequently been declared. None of them appears to have been transgressed in the instant case. Respondent was notified and heard. It had opportunity to meet the charge of unfair labor practices upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity. The facts found by the Board support its order and the evidence supports the findings. Respondent has no just ground for complaint on this score.

[19, 20] The order of the Board required the reinstatement of the employees who were found to have been discharged because of their "union activity" and for the purpose of "discouraging membership in the union." That requirement was authorized by the act. Section 10 (c), 29 U.S.C.A. § 160 (c). In Texas & N. O. R. Co. v. Railway & S. S. Clerks, supra, a similar order for restoration to service was made by the court in contempt proceedings for the violation of an injunction issued by the court to restrain an interference with

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the right of employees as guaranteed by the Railway Labor Act of 1926. The requirement of restoration to service of employees discharged in violation of the provisions of that act was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety.

[21] Respondent complains that the Board not only ordered reinstatement but directed the payment of wages for the time lost by the discharge, less amounts earned by the employee during that period. This part of the order was also authorized by the act. Section 10 (c). It is argued that the requirement is equivalent to a money judgment and hence contravenes the Seventh Amendment with respect to trial by jury. The Seventh Amendment provides that "In suits at common law, where the value in controversy shall exceed twenty dollars; the right of trial by jury shall be preserved." The amendment thus preserves the right which existed under the common law when the amendment was adopted. Shields v. Thomas, 18 How. 253, 262, 15 L.Ed. 368; In re Wood, 210 U.S. 246, 258, 28 S.Ct. 621, 52 L.Ed. 1046; Dimick v. Schiedt, 293 U.S. 474, 476, 55 S.Ct. 296, 79 L.Ed. 603, 95 A.L.R. 1150; Baltimore & Carolina Line v. Redman, 295 U.S. 654, 657, 55 S.Ct. 890, 891, 79 L.Ed. 1636. Thus it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. Clark v. Wooster, 119 U. S. 322, 325, 7 S.Ct. 217, 30 L.Ed. 392; Pease v. Rathbun-Jones Engineering Co., 243 U.S. 273, 279, 37 S.Ct. 283, 61 L.Ed. 715, Ann.Cas.1918C, 1147. It does not apply where the proceeding is not in the nature of a suit at common law. Guthrie National Bank v. Guthrie, 173 U.S. 528, 537, 19 S.Ct. 513, 43 L.Ed. 796.

The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employee and payment for time lost are

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requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit.

Our conclusion is that the order of the Board was within its competency and that

the act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion. It is so ordered.

Reversed and remanded.

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Mr. Justice McREYNOLDS delivered the following dissenting opinion.

Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, Mr. Justice BUTLER and I are unable to agree with the decisions just announced.

We conclude that these causes were rightly decided by the three Circuit Courts of Appeals and that their judgments should be affirmed. The opinions there given without dissent are terse, well-considered and sound. They disclose the meaning ascribed by experienced judges to what this Court has often declared and are set out below in full.

Considering the far-reaching import of these decisions, the departure from what we understand has been consistently ruled here, and the extraordinary power confirmed to a Board of three,[1] the obligation to present our views becomes plain.

The Court as we think departs from well-established principles followed in Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947 (May, 1935), and Carter v. Carter Coal Co., 298 U.S. 238, 56 S. Ct. 855, 80 L.Ed. 1160 (May, 1936). Upon the authority of those decisions, the Circuit Courts of Appeals of the Fifth, Sixth and Second Circuits in the causes now before us have held the power of Congress under the commerce clause does not extend to relations between employers and their employees engaged in manufacture, and therefore the act conferred upon the National Labor Relations Board no authority in respect of matters covered by the questioned orders. In Foster Bros. Mfg. Co. v. National Labor Relations Board, 85 F.(2d) 984, the Circuit Court of Appeals, Fourth Circuit, held the act inapplicable to manufacture and expressed the view that if so extended it

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would be invalid. Six District Courts, on the authority of Schechter's and Carter's Cases, have held that the Board has no authority to regulate relations between employers and employees engaged in local production.[a] No decision or judicial opinion to the contrary has been cited, and we find none. Every consideration brought forward to uphold the act before us was applicable to support the acts held unconstitutional in causes decided within two years. And the lower courts rightly deemed them controlling.

By its terms the Labor Act extends to employers—large and small—unless excluded by definition,[2] and declares that, if one of these interferes with, restrains, or coerces any employee regarding his labor affiliations, etc., this shall be regarded as

1 National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U.S. C.Supp. I, tit. 29, § 151 et seq. [29 U.S.C.A. § 151 et seq.]).

a Stout v. Pratt, 12 F.Supp. 864; Bendix Products Corporation v. Beman, 14 F.Supp. 58; Eagle-Picher Lead Co. v. Madden, 15 F.Supp. 407; Bethlehem Shipbuilding Corporation v. Meyers, 15 F.Supp. 915; El Paso Electric Co. v. Elliott, 15 F.Supp. 81; Oberman & Co. v. Pratt, 16 F.Supp. 887.

2 Sec. 2. (2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, amended from time to time [sections 151 to 163 of Title 45], or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

Sec. 2. (3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [chapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

unfair labor practice. And a "labor organization" means any organization of any kind or any agency or employee representation committee or plan which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor dis-
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putes, wages, rates of pay, hours of employment or conditions of work.[b]

The three respondents happen to be manufacturing concerns—one large, two relatively small. The act is now applied to each upon grounds common to all. Obviously what is determined as to these concerns may gravely affect a multitude of employers who engage in a great variety of private enterprises—mercantile, manufacturing, publishing, stock-raising, mining, etc. It puts into the hands of a Board power of control over purely local industry beyond anything heretofore deemed permissible.

II.

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[No. 419] Circuit Court of Appeals (Fifth Circuit)

(National Labor Relations Board v. Jones & Laughlin Steel Corporation)

Opinion June 15, 1936, 83 F.(2d) 998

Before Foster, Sibley, and Hutcheson, Circuit Judges.

By the Court: "The National Labor Relations Board has petitioned us to enforce an order made by it, which requires Jones & Laughlin Steel Corporation, organized under the laws of Pennsylvania, to reinstate certain discharged employees in its steel plant in Aliquippa, Pa., and to do other things in that connection.

"The petition must be denied, because, under the facts found by the Board and shown by the evidence, the Board has no jurisdiction over a labor dispute between employer and employees touching the discharge of laborers in a steel plant, who were engaged only in manufacture. The Constitution does not vest in the Federal Government the power to regulate the relation as such of employer and employee in production or manufacture.

" 'One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power & L. Co. v. Pfost, 286 U.S. 165, 182, 52 S.Ct. 548, 76 L.Ed. 1038. Production is not commerce; but a step in preparation for commerce. Chassaniol v. Greenwood, 291 U.S. 584–587, 54 S.Ct. 541, 78 L. Ed. 1004.

" 'We have seen that the word "commerce" is the equivalent of the phrase "intercourse for the purposes of trade."
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Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor, and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and

[b] Sec. 2. (5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Sec. 3. (a) There is created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it.' Carter v. Carter Coal Company [298 U.S. 238] 56 S.Ct. 855, 80 L.Ed. 1160, decided May 18, 1936.

"That the employer has a very large business, the interruption of which by a strike of employees which might happen, and that in consequence of such strike production might be stopped and interstate commerce in the products affected, does not make the regulation of the relation justified under the commerce power of Congress, because the possible effect on interstate commerce is too remote to warrant Federal invasion of the state's right to regulate the employer-employee relation. Nor is it important that the employer imports part of his raw materials in interstate commerce and sells and exports a large part of his product in interstate commerce, which imports and exports would possibly be stopped by a possible strike. The employers' entire business thus connected together does not, as respects federal power, make a case different from that in which importation of materials, manufacture of them, and sale and export of the product are conducted by three persons. The employer here by doing

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all three things does not alter the respective constitutional spheres of the federal and state governments. The making and fabrication of steel by Jones & Laughlin Steel Corporation is production regulable by the state of Pennsylvania, notwithstanding the corporation also engages in interstate commerce regulable by Congress in bringing in its raw materials and again in selling and delivering its products. No specific present intent appears to impede or destroy interstate commerce by means of a strike in a manufacturing plant, or other like direct obstruction to or burden on interstate commerce. The order we are asked to enforce is not shown to be one authorized to be made under the authority of Congress. Carter v. Carter Coal Co., supra.

"The petition is denied."

III.

[Nos. 420–421] Circuit Court of Appeals
(Sixth Circuit)
(Fruehauf Trailer Co. v. National Labor Relations Board)
Opinion June 30, 1936, 85 F.(2d) 391
Before Moorman, Hicks, and Simons, Circuit Judges.

"Per Curiam. The National Labor Relations Board has filed a petition in this court to enforce an order issued by it in proceedings which it instituted against the Fruehauf Trailer Company. The order directs the Trailer Company to cease and desist from discharging or threatening to discharge any of its employees because of their activities in connection with the United Automobile Workers Federal Labor Union No. 19,375, to cease discouraging its employees from becoming members of that union, to offer to certain of its former employees immediate and full reinstatement in their former positions without prejudice to their seniority rights, to make such employees whole for any losses of pay that they have suffered by reason of their discharge by paying

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them

what they would have earned as wages from the dates of their discharges, and to post notices throughout its Detroit plant, in conspicuous places, stating that it has ceased and desisted from discharging or threatening to discharge its employees for joining the United Automobile Workers Federal Labor Union No. 19,375. The Fruehauf Trailer Company has filed its petition seeking a review of the order and praying that the court set it aside. The record of the proceeding before the Labor Board has been filed and the two petitions have been heard together in this court.

"The Fruehauf Trailer Company is a corporation organized and existing under the laws of the state of Michigan and is engaged in the manufacture, assembly, and sale of automobile trailers at its plant in Detroit, Mich. The material and parts used in the manufacture and production of the trailers are shipped to the plant. After the trailers are manufactured, many of them are shipped to other states for sale and use. The order in question undertakes to regulate and control the Trailer Company's relations and dealings with its employees engaged in the production and manufacture of trailers at the company's plant in Detroit and does not directly affect any of the ac-

tivities of the Trailer Company in the purchasing and transporting to its plant of materials and parts for the manufacture and production of trailers or in the shipping or selling of such trailers after they are manufactured. It was issued under the authority of the Act of Congress of July 5, 1935, known as the National Labor Relations Act (29 U.S.C.A. § 151 et seq.). The authority for the act is claimed under the commerce clause of the Constitution. Since the order is directed to the control and regulation of the relations between the Trailer Company and its employees in respect to their activities in the manufacture and production of

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trailers and does not directly affect any phase of any interstate commerce in which the Trailer Company may be engaged, and since, under the ruling of Carter v. Carter Coal Company [298 U.S. 238] 56 S.Ct. 855, 80 L.Ed. 1160 (decided May 18, 1936), the Congress has no authority or power to regulate or control such relations between the Trailer Company and its employees, the National Labor Relations Board was without authority to issue the order. See National Labor Relations Board v. Jones & Laughlin Steel Corporation (C.C.A.5) 83 F. (2d) 998, decided June 15, 1936.

"The petition of the Board is accordingly dismissed and the order is set aside."

IV.

[Nos. 422–423] Circuit Court of Appeals (Second Circuit)

(National Labor Relations Board v. Friedman-Harry Marks Clothing Co.)

Opinion July 13, 1936, 85 F.(2d) 1

Before Manton, Swan, and A. N. Hand, Circuit Judges.

"Per Curiam. The respondent, a Virginia corporation, is a manufacturer of men's clothing with its principal office and its factory in Richmond, Va. Practically all the raw materials used are brought from other states into Virginia, where respondent manufactures them into men's clothing. About 83 per cent. of the manufactured products are sold f. o. b. Richmond, to customers located in states other than Virginia.

"Two sets of charges were filed with petitioner's local regional director by the Amalgamated Clothing Workers of America, a labor union of workers in the men's clothing industry, in which it was alleged that the respondent violated the National Labor Relations Act (29 U.S.C.A. § 151 et seq.) by discharging from its employ, and discriminating against 29 out of 800 of its employees, because they had engaged in union activities. The Board filed complaints under section 10(b) of the act (29 U.S.C.A.

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§ 160(b), and after a hearing respondent was found to have violated the act and was ordered to cease and desist from the unfair labor practices.

"Petitioner's theory is that the respondent is engaged in interstate commerce because of the shipment of raw materials to it from other states and the shipment of its finished products to other states, and, in addition, that the flow of commerce doctrine, as exemplified in Swift & Co. v. United States, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518, brings this manufacturer within the federal power to regulate commerce. Respondent contends that the National Labor Relations Act, as applied to it, is unconstitutional and therefore invalid, and that the attempt to enforce its provisions against it is illegal.

"It is shown that the alleged unfair labor practices complained of occurred in the manufacture of clothing in Richmond, Va. None of the workers involved had to do with the transportation of the clothing after its manufacture. They were engaged in various operations in the Richmond factory.

"The relations between the employer and its employees in this manufacturing industry were merely incidents of production. In its manufacturing, respondent was in no way engaged in interstate commerce, nor did its labor practices so directly affect interstate commerce as to come within the federal commerce power. Carter v. Carter Coal Co. [298 U.S. 238], 56 S.Ct. 855, 80 L.Ed. 1160, May 18, 1936; Schechter Poultry Corporation v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570, 97 A.L.R. 947. No authority warrants the conclusion that the powers of the Federal Government permit the regulation of the dealings between employers or employees when engaged in the purely local business of manufacture.

"Therefore the orders to cease and desist may not be enforced.

"Petitions denied."

V.

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In each cause the Labor Board formulated and then sustained a charge of unfair labor practices towards persons employed

only in production. It ordered restoration of discharged employees to former positions with payment for losses sustained. These orders were declared invalid below upon the ground that respondents while carrying on production operations were not thereby engaging in interstate commerce; that labor practices in the course of such operations did not directly affect interstate commerce; consequently respondents' actions did not come within congressional power.

Respondent in No. 419 is a large, integrated manufacturer of iron and steel products—the fourth largest in the United States. It has two production plants in Pennsylvania where raw materials brought from points outside the state are converted into finished products, which are thereafter distributed in interstate commerce throughout many states. The Corporation has assets amounting to $180,000,000, gross income $47,000,000, and employs 22,000 people—10,000 in the Aliquippa plant where the complaining employees worked. So far as they relate to essential principles presently important, the activities of this Corporation, while large, do not differ materially from those of the other respondents and very many small producers and distributors. It has attained great size; occupies an important place in business; owns and operates mines of ore, coal, and limestone outside Pennsylvania, the output of which, with other raw material, moves to the production plants. At the plants this movement ends. Having come to rest, this material remains in warehouses, storage yards, etc., often for months, until the process of manufacture begins. After this has been completed, the finished products go into interstate commerce. The discharged employees labored only in the manufac

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turing department. They took no part in the transportation to or away from the plant; nor did they participate in any activity which preceded or followed manufacture.

Our concern is with those activities which are common to the three enterprises. Such circumstances as are merely fortuitous—size, character of products, etc. —may be put on one side. The wide sweep of the statute will more readily appear if consideration be given to the Board's proceedings against the smallest and relatively least important—the Clothing Company. If the act applies to the relations of that Company to employees in production, of course it applies to the larger respondents with like business elements although the affairs of the latter may present other characteristics. Though differing in some respects, all respondents procure raw materials outside the state where they manufacture, fabricate within and then ship beyond the state.

In Nos. 420, 421, the respondent, Michigan corporation, manufactures commercial trailers for automobiles from raw materials brought from outside that state, and thereafter sells these in many states. It has a single manufacturing plant at Detroit and annual receipts around $3,000,000; 900 people are employed.

In Nos. 422, 423, the respondent is a Virginia corporation engaged in manufacturing and distributing men's clothing. It has a single plant and chief office at Richmond, annual business amounting perhaps to $2,000,000, employs 800, brings in almost all raw material from other states and ships the output in interstate commerce. There are some 3,300 similar plants for manufacturing clothing in the United States, which together employ 150,000 persons and annually put out products worth $800,000,000.

VI.

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The Clothing Company is a typical small manufacturing concern which produces less than one-half of one per cent. of the men's clothing produced in the United States and employs 800 of the 150,000 workmen engaged therein. If closed today, the ultimate effect on commerce in clothing obviously would be negligible. It stands alone, is not seeking to acquire a monopoly or to restrain trade. There is no evidence of a strike by its employees at any time or that one is now threatened, and nothing to indicate the probable result if one should occur.

Some account of the Labor Board's proceedings against this Company will indicate the ambit of the act as presently construed.

September 28, 1935, the Amalgamated Clothing Workers of America, purporting to act under section 10 (b) of the National Labor Relations Act,[3] filed with the

[3] Sec. 10. (b). Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency des-

Board a

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"Charge," stating that the Clothing Company had engaged in unfair labor practices within the meaning of the act—section 8 (1) (3), 29 U.S.C.A. § 158 (1, 3)—in that it had, on stated days in August and September, 1935, unjustifiably discharged, demoted or discriminated against some 20 named members of that union and, in other ways, had restrained, interfered with and coerced employees in the exercise of their right of free choice of representatives for collective bargaining. And further "that said labor practices are unfair labor practices affecting commerce within the meaning of said Act."

This "Charge" contained no description of the Company's business, no word concerning any strike against it past, present or threatened. The number of persons employed or how many of these had joined the union is not disclosed.

Thereupon the Board issued a "Complaint" which recited the particulars of the "Charge," alleged incorporation of the Company in Virginia, and ownership of a plant at Richmond where it is continuously engaged in the "production, sale and distribution of men's clothing"; that material is brought from other states and manufactured into clothing, which is sold and shipped to many states, etc.—"all of aforesaid constituting a continuous flow of commerce among the several states." Also that while operating the Richmond plant the Clothing Company discharged, demoted, laid off or discriminated against some 20 persons "employed in production at the said plant * * * for the reason that all of the said employees, and each of them, joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection," etc. Further, that the Company circulated among its employees and under

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took to coerce them to sign a writing expressing satisfaction with conditions; induced some members of the union to withdraw; did other similar things, etc.—all of which amounted to unfair labor practices affecting commerce within the meaning of section 8 (1) (3) (4) [4] and section 2 (6)

ignated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling. 29 U.S.C.A. § 160(b).

[4] Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title].

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a) [section 156 of this title], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act [chapter], or in the National Industrial Recovery Act (U.S.C., Supp. VII, title 15, secs. 701-712), as amended from time to time [sections 701 to 712 of Title 15], or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act [chapter] as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) [section 159 (a) of this title], in the appropriate collective

(7) [5] of the Labor Act. "The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof."

The complaint says nothing concerning any strike against the Clothing Company past, present or threatened; there is no allegation concerning the number of persons employed, how many joined the union, or the value of the output.

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The respondent filed a special appearance objecting to the Board's jurisdiction, which was overruled; also an answer admitting the discharge of certain employees, but otherwise it generally denied the allegations of the "Complaint."

Thereupon the Board demanded access to the Company's private records of accounts, disclosure of the amount of capital invested by its private owners, the names of all of its employees, its pay rolls, the amounts and character of all purchases and from whom made, the amounts of sales and to whom made, including the number and kind of units, the number of employees in the plant

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during eight years, the names and addresses of the directors and officers of the Company, the names and addresses of its salesmen, the stock ownership of the Company, the affiliation, if any, with other companies, and the former occupations and businesses of its stockholders.

During hearings held at Richmond and Washington, unfettered by rules of evidence, it received a mass of testimony—largely irrelevant. Much related to the character of respondent's business, general methods used in the men's clothing industry, the numbers employed and the general effect of strikes therein. The circumstances attending the discharge or demotion of the specified employees were brought out.

Following this the Board found—

The men's clothing industry of the United States ranks sixteenth in the number of wage earners employed, with more than 3,000 firms and 150,000 workers engaged. The steps in the typical process of manufacture are described. Raw material is brought in from many states, and after fabrication the garments are sold and delivered through canvassers and retailers. "The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation."

The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in making clothing. Members are organized in local unions. Before recognition of this union by employers long and bitter strikes occurred, some of which are de-

bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act [chapter].

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a) [section 159 (a) of this title]. 29 U.S.C.A. § 158.

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer. 29 U.S.C.A. § 159(a).

[5] Sec. 2 (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce. 29 U.S.C.A. § 152 (6, 7).

scribed. The union has striven consistently to improve the general economic and social conditions of members. Benefits that flow from recognizing and co-operating with it are realized by manufacturers.

Description is given of the Clothing Company's operations, the sources of its raw material (nearly all outside

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Virginia), and the method used to dispose of its output. Eighty-two per cent. is sold to customers beyond Virginia. It is among the fifty largest firms in the industry, and among the ten of that group paying the lowest average wage.

In the summer of 1935 the employees at the Richmond plant formed a local of the Amalgamated Clothing Workers and solicited memberships. The management at once indicated opposition and declared it would not permit employees to join. Hostile acts and the circumstances of the discharge or demotion of complaining employees are described. It is said all were discharged or demoted because of union membership. And further that "Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the contrary position, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce."

The number of employees who joined the union does not appear; the general attitude of employees towards the union or the Company is not disclosed; the terms of employment are not stated—whether at will, by the day or by the month. What the local chapter was especially seeking at the time we do not know.

It does not appear that, either prior or subsequent to the "Complaint," there has been any strike, disorder or

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industrial strife at respondent's factory, or any interference with or stoppage of production or shipment of its merchandise. Nor that alleged unfair labor practices at its plant had materially affected manufacture, sale or distribution; or materially affected, burdened or obstructed the flow of products; or affected, burdened or obstructed the flow of interstate commerce, or tended to do so.

The Board concluded that the Clothing Company had discriminated in respect to tenure and employment and thereby had discouraged membership in the union; that it had interfered with, restrained and coerced its employees in violation of rights guaranteed by section 7 of the National Labor Relations Act; that these acts occurred in the course and conduct of commerce among the states, immediately affect employees engaged in the course and conduct of interstate commerce, and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

An order followed, March 28, 1936, which commanded immediate reinstatement of eight discharged employees and payment of their losses; also that the Company should cease and desist from discharging or discriminating against employees because of connections with the union, should post notices, etc. On the same day the Board filed a petition asking enforcement of the order in the United States Circuit Court of Appeals (Second Circuit) at New York, which was denied July 13, 1936. National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 85 F.(2d) 1.

VII.

The precise question for us to determine is whether in the circumstances disclosed Congress has power to authorize what the Labor Board commanded the respondent to do. Stated otherwise, in the circumstances here existing could Congress by statute direct what the Board has ordered? General disquisitions concerning the en

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actment are of minor, if any, importance. Circumstances not treated as essential to the exercise of power by the Board may, of course, be disregarded. The record in Nos. 422, 423—a typical case—plainly presents these essentials and we may properly base further discussion upon the circumstances there disclosed.

A relatively small concern caused raw material to be shipped to its plant at Richmond, Va., converted this into clothing, and thereafter shipped the product to points outside the State. A labor union sought members among the employees at the plant and obtained some. The Company's management opposed this effort, and in order to discourage it discharged eight who had become members. The business of the Company is so small that to close its factory would have no direct or material effect upon the volume of interstate commerce in clothing. The number of operatives who joined the union is not disclosed; the wishes of other employees is not shown; probability of a strike is not found.

The argument in support of the Board affirms: "Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it could be prevented."

Manifestly that view of congressional power would extend it into almost every field of human industry. With striking lucidity, fifty years ago, Kidd v. Pearson, 128 U.S. 1, 21, 9 S.Ct. 6, 10, 32 L.Ed. 346, declared: "If it be held that the term [commerce with foreign nations and among the several states] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in

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the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that congress would be invested, to the exclusion of the states, with the power to regulate, not only manufacture, but also agriculture, horticulture, stock-raising, domestic fisheries, mining,—in short, every branch of human industry." This doctrine found full approval in United States v. E. C. Knight Co., 156 U.S. 1, 12, 13, 15 S.Ct. 249, 253, 39 L.Ed. 325; Schechter Poultry Corporation et al. v. United States, supra, and Carter v. Carter Coal Co. et al., supra, where the authorities are collected and principles applicable here are discussed.

In Knight's Case, Chief Justice Fuller, speaking for the Court, said: "Doubtless the power to control the manufacture of a given thing involves, in a certain sense, the control of its disposition, but this is a secondary, and not the primary, sense; and, although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. * * * It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for, while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the states as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

In Schechter's Case we said: "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate

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commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. * * * But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control."

Carter's Case declared—"Whether the effect of a given activity or condition is direct or indirect is not always easy to determine. The word 'direct' implies that the activity or condition invoked or blamed shall operate proximately—not mediately, remotely, or collaterally—to produce the

effect. It connotes the absence of an efficient intervening agency or condition. And the extent of the effect bears no logical relation to its character. The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined."

Any effect on interstate commerce by the discharge of employees shown here would be indirect and remote in

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the highest degree, as consideration of the facts will show. In No. 419 ten men out of ten thousand were discharged; in the other cases only a few. The immediate effect in the factor may be to create discontent among all those employed and a strike may follow, which, in turn, may result in reducing production, which ultimately may reduce the volume of goods moving in interstate commerce. By this chain of indirect and progressively remote events we finally reach the evil with which it is said the legislation under consideration undertakes to deal. A more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine.

The Constitution still recognizes the existence of states with indestructible powers; the Tenth Amendment was supposed to put them beyond controversy.

We are told that Congress may protect the "stream of commerce" and that one who buys raw material without the state, manfactures it therein, and ships the output to another state is in that stream. Therefore it is said he may be prevented from doing anything which may interfere with its flow.

This, too, goes beyond the constitutional limitations heretofore enforced. If a man raises cattle and regularly delivers them to a carrier for interstate shipment, may Congress prescribe the conditions under which he may employ or discharge helpers on the ranch? The products of a mine pass daily into interstate commerce; many things are brought to it from other states. Are the owners and the miners within the power of Congress in respect of the latter's tenure and discharge? May a mill owner be prohibited from closing his factory or discontinuing his business because so to do would stop the flow of products to and from his plant in interstate commerce?

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May employees in a factory be restrained from quitting work in a body because this will close the factory and thereby stop the flow of commerce? May arson of a factory be made a federal offense whenever this would interfere with such flow? If the business cannot continue with the existing wage scale, may Congress command a reduction? If the ruling of the Court just announced is adhered to, these questions suggest some of the problems certain to arise.

And if this theory of a continuous "stream of commerce" as now defined is correct, will it become the duty of the federal government hereafter to suppress every strike which by possibility it may cause a blockade in that stream? In re Debs, 158 U. S. 564, 15 S.Ct. 900, 39 L.Ed. 1092. Moreover, since Congress has intervened, are labor relations between most manufacturers and their employees removed from all control by the state? Oregon-Washington R. Co. v. Washington (1926) 270 U. S. 87, 46 S.Ct. 279, 70 L.Ed. 482.

To this argument Arkadelphia Milling Co. v. St. Louis Southwestern Railway Co., et al., 249 U. S. 134, 150, 39 S.Ct. 237, 63 L.Ed. 517, affords an adequate reply. No such continuous stream is shown by these records as that which counsel assume.

There is no ground on which reasonably to hold that refusal by a manfacturer, whose raw materials come from states other than that of his factory and whose products are regularly carried to other states, to bargain collectively with employees in his manufacturing plant, directly affects interstate commerce. In such business, there is not one but two distinct movements or streams in interstate transportation. The first brings in raw material and there ends. Then follows manufacture, a separate and local activity. Upon completion of this and not before, the second distinct movement or stream in interstate commerce begins and the products,

go to other states. Such is the common course for small as well as

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large industries. It is unreasonable and unprecedented to say the commerce clause confers upon Congress power to govern relations between employers and employees in these local activities. Stout v. Pratt (D.C.) 12 F. Supp. 864. In Schechter's Case we condemned as unauthorized by the commerce clause assertion of federal power in respect of commodities which had come to rest after interstate transportation. And, in Carter's Case, we held Congress lacked power to regulate labor relations in respect of commodities before interstate commerce has begun.

It is gravely stated that experience teaches that if an employer discourages membership in "any organization of any kind" "in which employees participate, and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work," discontent may follow and this in turn may lead to a strike, and as the outcome of the strike there may be a block in the stream of interstate commerce. Therefore Congress may inhibit the discharge! Whatever effect any cause of discontent may ultimately have upon commerce is far too indirect to justify congressional regulation. Almost anything—marriage, birth, death—may in some fashion affect commerce.

VIII.

That Congress has power by appropriate means, not prohibited by the Constitution, to prevent direct and material interference with the conduct of interstate commerce is settled doctrine. But the interference struck at must be direct and material, not some mere possibility contingent on wholly uncertain events; and there must be no impairment of rights guaranteed. A state by taxation on property may indirectly but seriously affect the cost of transportation; it may not lay a direct tax upon

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the receipts from interstate transportation. The first is an indirect effect, the other direct.

This power to protect interstate commerce was invoked in Standard Oil Co. v. United States, 221 U. S. 1, 31 S.Ct. 502, 55 L.Ed. 619, 34 L.R.A.(N.S.) 834, Ann. Cas.1912D, 734, and United States v. American Tobacco Co., 221 U.S. 106, 31 S.Ct. 632, 55 L.Ed. 663. In each of those cases a combination sought to monopolize and restrain interstate commerce through purchase and consequent control of many large competing concerns engaged both in manufacture and interstate commerce. The combination was sufficiently powerful and action by it so persistent that success became a dangerous probability. Here there is no such situation, and the cases are inapplicable in the circumstances. There is no conspiracy to interfere with commerce unless it can be said to exist among the employees who became members of the union. There is a single plant operated by its own management whose only offense, as alleged, was the discharge of a few employees in the production department because they belonged to a union, coming within the broad definition of "labor organization" prescribed by section 2 (5) of the act. That definition includes any organization in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, wages, &c.

Section 13 of the Labor Act (29 U.S.C.A. § 163) provides—"Nothing in this Act [chapter] shall be construed so as to interfere with or impede or diminish in any way the right to strike." And yet it is ruled that to discharge an employee in a factory because he is a member of a labor organization (any kind) may create discontent which may lead to a strike and this may cause a block in the "stream of commerce"; consequently the discharge may be inhibited. Thus the act exempts from its ambit the very evil which counsel insist may result from discontent caused by a discharge of an association member, but permits coercion of a nonmember to join one.

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The things inhibited by the Labor Act relate to the management of a manufacturing plant—something distinct from commerce and subject to the authority of the state. And this may not be abridged because of some vague possibility of distant interference with commerce.

IX.

Texas & New Orleans Railroad Co. et al., v. Brotherhood of Railway & Steamship Clerks et al., 281 U.S. 548, 50 S.Ct. 427, 434, 74 L.Ed. 1034, is not controlling. There the Court, while considering an act definitely limited to common carriers engaged in interstate transportation over

whose affairs Congress admittedly has wide power, declared: "The petitioners invoke the principle declared in Adair v. United States, 208 U.S. 161, 28 S.Ct. 277, 52 L.Ed. 436, 13 Ann.Cas. 764, and Coppage v. Kansas, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441, L.R.A.1915C, 960, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

Adair's Case, supra, presented the question—"May Congress make it a criminal offense against the United States—as, by the 10th section of the act of 1898 [30 Stat. 428], it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?" The answer was no. "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may

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require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair,—however unwise such a course might have been,—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so, however unwise such course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land." "The provision of the statute under which the defendant was convicted must be held to be repugnant to the 5th Amendment, and as not embraced by nor within the power of Congress to regulate interstate commerce, but, under the guise of regulating interstate commerce, and as applied to this case, it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant, Adair."

Coppage v. Kansas, following the Adair Case held that a state statute, declaring it a misdemeanor to require an

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employee to agree not to become a member of a labor organization during the time of his employment, was repugnant to the due process clause of the Fourteenth Amendment.

The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractual relations. This right is unduly abridged by the act now upheld. A private owner is deprived of power to manage his own property by freely selecting those to whom his manufacturing operations are to be entrusted. We think this cannot lawfully be done in circumstances like those here disclosed.

It seems clear to us that Congress has transcended the powers granted.