XV

Government and Labor

NOTE

In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, decided in 1937, the Supreme Court upheld the National Labor Relations Act.[1]

The National Labor Relations Act was enacted for the purpose of diminishing the causes of labor disputes, which burdened or obstructed interstate and foreign commerce, '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.' The constitutional basis of the act is the commerce power.

This is a far cry from early English statutes like the Ordinance of Labourers[2] which required that every English man and woman 'not living in merchandize, nor exercising any craft, nor having of his own whereof he may live' might be compelled to work, and at such wages as 'were accustomed to be given in the places where he oweth to serve. . .' And any man or woman 'being so required to serve, will not the same do . . . he shall anon be taken . . . and committed to the next gaol. . .' The concepts that a maximum wage could be fixed by law and that men could be compelled to work led eventually to a charge of criminal conspiracy when workers struck in an effort to increase wages.[3]

The early incorporation of the doctrine of conspiracy into American law made collective action by workers difficult. Early in the 19th century, the journeymen cordwainers of Philadelphia were indicted for conspiring and confederating and unlawfully agreeing not to work for wages below a certain set schedule. The indictment charged that the defendants had conspired and joined together '"to prevent by threats, menaces, and other unlawful means," other artificers from working in the . . . occupation of a cordwainer, for wages below the fixed schedule of rates.'[4] 'What is the case now before us?', queried Recorder Levy. 'A combination of workmen to raise their wages may be considered in a two fold point of view: one is to benefit themselves . . . the other is to injure those who do not join their society. The rule of law condemns both.' The defendants were found guilty of a combination to increase their wages and each was fined eight dollars and costs.

[1] 49 Stat. 449 (1935).

[2] 23 Edward III (1349), in Sayre, Francis Bowes, *A Selection of Cases and Other Authorities on Labor Law*, Cambridge, 1923, p. 3.

[3] *Rex* v. *Hammond*, 2 Espinasse 719 (1799), in Sayre, op. cit. pp. 44-5.

[4] *Case of Philadelphia Cordwainers*, Mayor's Court (1806), in Sayre, op. cit. p. 99.

This harsh rule, with gradual modifications,[5] persisted until 1842 when the Supreme Judicial Court of Massachusetts decided the case of *Commonwealth* v. *Hunt*.[6] In this case the defendants were charged with having formed a society 'and agreed not to work for any person, who should employ any journeyman or other person, not a member of such society,' after notice had been given the employer to discharge such person. On appeal, the conviction was set aside. 'The manifest intent of the association is,' said Chief Justice Shaw, 'to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes, or for dangerous and pernicious ones. If the latter were the real and actual object . . . it should have been specially charged [in the indictment]. Such an association might be used to afford each other assistance in times of poverty, sickness and distress; or to raise their intellectual, moral and social condition; or to make improvement in their art. . . Or the association might be designed for purposes of oppression and injustice. But in order to charge all those, who become members of an association, with the guilt of a criminal conspiracy, it must be averred and proved that the actual, if not the avowed object of the association, was criminal.' This decision rerpesented a great advance in that 'it permanently arrested the tendency to identify a labor organization as such with a criminal conspiracy. . .'[7] This identification had been real enough; in one case it had been held that whether the defendants had confederated to accomplish either a lawful or an unlawful object, because of their confederation they would be liable to the conspiracy charge.[8]

The first large-scale American labor organization was the Knights of Labor, founded in Philadelphia in 1869. This organization was superseded by the American Federation of Labor. The unions, in time, however, found themselves opposed to large corporations which had at their disposal such protective devices as the injunction,[9] the yellow-dog contract,[10] the blacklist, the lockout, the company union, not to speak of the police, the militia, and other strike-breaking agencies.

The National Industrial Recovery Act[11] was enacted by Congress in 1933 in the face of a national emergency 'productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce.'

[5] 'During the next three decades there followed a series of indictments and convictions for criminal conspiracy; but nearly all of them presented elements of coercion and intimidating practices.' Frankfurter, Felix, and Greene, Nathan, *The Labor Injunction*, New York, 1930, p. 3.

[6] 4 Metcalf 111 (1842), in Sayre, op. cit. pp. 104-11.

[7] Frankfurter and Greene, op. cit. p. 4.

[8] *People* v. *Melvin*, 2 Wheeler C.C. (N.Y.) 262, in Sayre, op. cit. pp. 102-4.

[9] *In re Debs*, 158 U.S. 564 (1895). This case relates to the rail strike of 1894. Debs and others had been imprisoned for contempt of court in disobeying an injunction of a Federal court forbidding further obstruction of trains engaged in interstate commerce or in carrying the mails. The Supreme Court decided unanimously that the lower court had power to grant the injunction. The Norris-LaGuardia Act, 47 Stat. 70 (1932), limited the powers of the Federal courts to issue injunctions in labor disputes.

[10] See *Coppage* v. *State of Kansas*, 236 U.S. 1 (1915). Such contracts were made unenforceable in the Federal courts by the Norris-LaGuardia Act of 1932.

[11] 48 Stat. 195.

Among the objectives of the act was the reduction and relief of unemployment and improvement of standards of labor. Section 7-A guaranteed the right of collective bargaining in labor-management relations.

The NIRA was reviewed by the Supreme Court in the case of *A.L.A. Schechter Poultry Corp.* v. *United States*.[12] The act was declared to be, first, an unconstitutional delegation of legislative power, and second, an unconstitutional extension of the power of Congress over intrastate commerce. It was held that the Federal government could not regulate the wages and hours of labor of persons employed in the internal commerce of a state. The Court found no justification for such regulation in the fact that wages and hours affect costs and prices, and so indirectly affect interstate commerce.

On the basis of the commerce power, Congress in 1935 enacted the Bituminous Coal Conservation Act.[13] A Bituminous Coal Code, prepared in pursuance of the act, provided in part that employees be given the right to organize and to bargain collectively through representatives of their own choice, free from any interference, restraint, or coercion by the operators. In *Carter* v. *Carter Coal Company*,[14] the act was declared to be unconstitutional. 'Much stress,' said Mr. Justice Sutherland, 'is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, et cetera, and the resulting strikes, curtailment and irregularity of production and effect on prices; and it is insisted that interstate commerce is *greatly* affected thereby. But . . . the conclusive answer is that the evils are all local evils over which the federal government has no legislative control. The relation of employer and employee is a local relation. At common law, it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity.'[15]

In 1937, prior to the decision of the Supreme Court in the Jones and Laughlin case, it seemed probable to those who were familiar with the narrow interpretation of the commerce power set forth in the Schechter and Carter cases that the National Labor Relations Act could not survive the scrutiny of the Supreme Court.

NATIONAL LABOR RELATIONS BOARD v. JONES & LAUGHLIN STEEL CORPORATION

301 U.S. 1 (1937)

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

In a proceeding under the National Labor Relations Act of 1935, 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

[12] 295 U.S. 495 (1935).
[13] 49 Stat. 991.
[14] 298 U.S. 238 (1936).
[15] Ibid. 308.

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.

The scheme of the National Labor Relations Act—which is too long to be quoted in full—may be briefly stated. The first section 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 collective 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. The Act then defines the terms it uses, including the terms 'commerce' and 'affecting commerce.' § 2. It creates the National Labor Relations Board and prescribes its organization. §§ 3-6. It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing. § 7. It defines 'unfair labor practices.' § 8. It lays down rules as to the representation of employees for the purpose of collective bargaining. § 9. 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 orders. 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. § 10. The Board has broad powers of investigation. § 11. Interference with members of the Board or its agents in the performance of their duties is punishable by fine and imprisonment. § 12. Nothing in the Act is to be construed to interfere with the right to strike. § 13. 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. § 15. 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. 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 § 8, subdivisions (1) and (3), and § 2, subdivisions (6) and (7) of the Act. Respondent, appearing specially for the purpose of 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 § 2 of Article III 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 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, Pennsylvania. 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 and Ohio Railroad systems. It owns the Aliquippa and Southern Railroad Company which connects the Aliquippa works with the Pittsburgh and 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 semi-finished 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 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 semi-finished 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 intra-plant 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 iron and the second being the manufacture of semi-finished 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.

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 one) 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.

If this conception of terms, intent and consequent inseparability were sound, the Act would necessarily fall by reason of 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 Corp.* v. *United States,* 295 U.S. 495, 549, 550, 554. 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.*

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. . .

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 § 10 (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) affecting commerce.'

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 (§ 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.'

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' (§ 2 (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.'

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 rendered immune because they grow out of labor disputes. . . It is the effect upon commerce, not the source of the injury, which is the criterion. *Second Employers' Liability Cases,* 223 U.S. 1, 51. 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.

Second. The unfair labor practices in question.—The unfair labor practices found by the Board are those defined in § 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.'

'(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. . .'

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

'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.'

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 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. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality

of collective action on the part of employees in 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 negotiation 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 Clerks* [281 U.S. 548]. We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934. *Virginian Railway Co.* v. *System Federation, No. 40* [300 U.S. 515].

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. . .

The Government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving 'a great movement of 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. *Stafford* v. *Wallace,* 258 U.S. 495. 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 non-discriminatory 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.,* p. 526. See *Minnesota* v. *Blasius,* 290 U.S. 1, 8. Applying the doctrine of *Stafford* v. *Wallace, supra,* the Court sustained the Grain Futures Act of 1922 with respect to transactions on the Chicago Board of Trade, although these transactions were 'not in and of themselves interstate commerce.' Congress had found that they had become 'a constantly recurring burden and obstruction to that commerce.' *Chicago Board of Trade* v. *Olsen,* 262 U.S. 1, 32; compare *Hill* v. *Wallace,* 259 U.S. 44, 69. . .

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 periods and, after being subjected to man-

ufacturing 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 Ry. Co.*, 249 U.S. 134, 151; *Oliver Iron Co.* v. *Lord* [262 U.S. 172].

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 the power to enact 'all appropriate legislation' for 'its protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*Mobile County* v. *Kimball*, 102 U.S. 691, 696, 697); 'to foster, protect, control, and restrain.' *Second Employers' Liability Cases*, *supra*, p. 47. See *Texas & N. O. R. Co.* v. *Railway 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*, p. 51; *Schechter Corp.* 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 Corp.* 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 *Chicago Board of Trade* v. *Olsen*, *supra*, p. 37, 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 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 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. *Shreveport Case*, 234 U.S. 342, 351, 352; *Wisconsin Railroad Comm'n* v. *Chicago, B. & Q. R. Co.*, 257 U.S. 563, 588. It is manifest that intrastate rates deal *primarily* with a local activity. But in ratemaking 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, Congress went so far as to authorize the Interstate Commerce Commission to establish a state-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. *Wisconsin Railroad Comm'n* v. *Chicago, B. & Q. R. Co., supra; Florida* v. *United States,* 282 U.S. 194, 210, 211. Other illustrations are found in the broad requirements of the Safety Appliance Act and the Hours of Service Act. *Southern Railway Co.* v. *United States,* 222 U.S. 20; *Baltimore & Ohio R. Co.* v. *Interstate Commerce Comm'n,* 221 U.S. 612. 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. In the *Standard Oil* and *American Tobacco* cases, 221 U.S. 1, 106, that statute was applied to combinations of employers engaged in productive industry. 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. pp. 5, 125. Counsel relied upon the decision in *United States* v. *Knight Co.,* 156 U.S. 1. 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. 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. pp. 68, 69.

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; *Coronado Coal Co.* v. *United Mine Workers* [268 U.S. 295]; *Bedford Cut Stone Co.* v. *Stone Cutters' Assn.,* 274 U.S. 37. See, also, *Local* 167 v. *United States,* 291 U.S. 293, 397; *Schechter Corp.* 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, 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. . . 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], p. 408. 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. p. 310. 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], p. 81. 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 everywhere,' a result inconsistent with the maintenance of our federal system. In the *Carter* case, [298 U.S. 238], 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.

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 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 amend-

ment, 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 a 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 railroad 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!

These questions have frequently engaged the attention of Congress and have been the subject of many inquiries. 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 1919-20 with its far-reaching consequences. 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.

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 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 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 § 9 (a) 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 § 2, Ninth, of the Railway Labor Act 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 anyone other than their true representative as ascertained in accordance with the provisions of the Act. We said that the obligation to treat with 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, the in-

junction 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 anyone 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 § 9 (a) of the National Labor Relations Act.

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.' The Act expressly provides in § 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. . . 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 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.

The Act has been criticised 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. . . The question in such cases is whether the legislature, in what it does prescribe, has gone beyond constitutional limits.

The procedural provisions of the Act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Comm'n* v. *Louisville & Nashville R. Co.*, 227 U.S. 88, 91. 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.

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. § 10 (c). In *Texas & N. O. R. Co.* v. *Railway 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 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.

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. § 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; *In re Wood,* 210 U.S. 246, 258; *Dimick* v. *Schiedt,* 293 U.S. 474, 476; *Baltimore & Carolina Line* v. *Redman,* 295 U.S. 654, 657. 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; *Pease* v. *Rathbun-Jones Engineering Co.,* 243 U.S. 273, 279. 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.

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 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.

Reversed.

[Justices McReynolds, Van Devanter, Sutherland and Butler dissented.]

NOTE

The chief provisions of the Fair Labor Standards Act[1] relate to wages, hours of labor, and child labor.

In its findings, the Congress declared 'that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.' By virtue of its power to regulate interstate commerce the policy of Congress would be 'to correct and as rapidly as practicable to eliminate the conditions above referred to. . .'

Section 6 contains the minimum wage provisions, that is, it places a 'floor' under wages; section 7 relates to maximum hours; section 12 excludes the products of child labor from interstate commerce. Section 15 provides in part that 'it shall be unlawful for any person—(1) to transport . . . ship, deliver, or sell in commerce . . . any goods in the production of which any employee was employed in violation of section 6 or section 7 . . .' or '(4) to violate any of the provisions of section 12. . .'

In 1914, the Supreme Court of Oregon upheld the State's minimum wage law. Appeal was made to the Supreme Court of the United States which affirmed by an equally divided court the decision of the Oregon court.[2] The validity of minimum wage legislation in general, however, was left in doubt. This uncertainty was removed when the Supreme Court in 1923 declared unconstitutional a minimum wage law of the District of Columbia relating to women and children;[3] the law was held to be contrary to the principle of freedom of contract as established by the 5th Amendment.

The question of minimum wage legislation came before the Supreme Court again in the case of *Morehead* v. *New York ex rel. Tipaldo*.[4] On the authority of the Adkins decision, the Supreme Court by a five to four decision declared the New York minimum wage law to be an arbitrary denial of due process of

[1] 52 Stat. 1060 (1938).
[2] *Stettler* v. *O'Hara*, 243 U.S. 629 (1917).
[3] *Adkins* v. *Children's Hospital*, 261 U.S. 525 (1923).
[4] 298 U.S. 587 (1936).

law. Thus, both the Federal government and the state governments were denied the power to enact minimum wage legislation.

By this time, the Supreme Court was the object of severe criticism.[5] The Court was more than criticised, it was threatened by the President's plan for the reorganization of the Federal judiciary.[6] As a possible consequence, the Court proceeded to discard some outworn precedents. When the minimum wage law of the State of Washington came up for review in *West Coast Hotel Co.* v. *Parrish*,[7] it was upheld by a five to four decision. In this case, the Supreme Court overruled the Adkins decision.

Laws limiting hours of labor for women and children have, in general, been sustained by the courts. Oregon in 1903 limited to ten the number of hours a woman might work in a factory or laundry. This law was attacked as a violation of freedom of contract and a denial of equal protection under the 14th Amendment; but the Supreme Court held the enactment to be a valid exercise of the police power.[8] 'The limitations which this statute places upon her contractual powers,' said Mr. Justice Brewer, '. . . are not imposed solely for her benefit, but also largely for the benefit of all. . . The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race . . . justifies a difference of legislation. . .'[9]

Legislation affecting hours of labor for men has developed slowly. In certain hazardous occupations such as mining, maximum hours legislation has been upheld. For example, a Utah statute limited workers in mines to an eight-hour day. This was challenged as a violation of the 14th Amendment, but the Supreme Court held that the right to freedom of contract was not an absolute right, but a right subject to the police power of the state, particularly when there was reasonable ground to believe that the occupation in question was dangerous or unhealthy.[10]

The Supreme Court in *Lochner* v. *New York*[11] held that a limitation upon hours of labor in a private establishment under non-hazardous conditions was unconstitutional. Finally, in *Bunting* v. *Oregon*,[12] decided in 1917, the Court deemed valid an Oregon ten-hour day law for men employed in factories.

To turn to the case which follows, the Darby Lumber Company was charged with violation of certain sections of the Fair Labor Standards Act. The company demurred to the indictment. The district court sustained the demurrer and quashed the indictment upon 'the broad grounds that the Act, which it interpreted

[5] U.S. Congress. Senate. Committee on the Judiciary. *Reorganization of the Federal Judiciary*, Hearings, 75th Cong., 1st sess., 1937.

[6] Ibid. pp. 1-3. See also *Message from the President of the United States transmitting a Recommendation to Reorganize the Judicial Branch of the Federal Government*, 75th Cong., 1st sess., H. Doc. No. 142, 1937.

[7] 300 U.S. 379 (1937).

[8] *Muller* v. *Oregon*, 208 U.S. 412 (1908).

[9] Ibid. 422-3.

[10] *Holden* v. *Hardy*, 169 U.S. 366 (1898).

[11] 198 U.S. 45 (1905).

[12] 243 U.S. 426.

as a regulation of manufacture within the states'[13] was unconstitutional. The district court was of the opinion 'that manufacture is not interstate commerce and that the regulation by the Fair Labor Standards Act of wages and hours of employment of those engaged in the manufacture of goods . . . is not within the congressional power to regulate interstate commerce.'[14] This raised the question of *Hammer* v. *Dagenhart*,[15] decided in 1918.

On the basis of the postal and commerce powers Congress has enacted legislation designed to promote and to protect the safety, morals, and health of the public. Beginning in 1893, Congress enacted a series of safety appliance measures the object of which was the protection of passengers and employees on interstate railroads. Congress also prohibited from interstate commerce such articles as lottery tickets, obscene literature, stolen automobiles, prize-fight films, impure and improperly branded foods and drugs. The White Slave Act makes unlawful the transportation of women across state lines for immoral purposes. More recently, Congress has prohibited the carriage of convict-made goods into any state contrary to the laws of the state.

Encouraged by the trend of Supreme Court decisions, the advocates of child-labor legislation pushed through Congress the first child-labor bill.[16] The products of mine and factory, wholly or in part produced by child-labor, were excluded from interstate commerce. It was expected by many that the Supreme Court would without question uphold the enactment. The law, however, was struck down by a Court divided five to four in the case of *Hammer* v. *Dagenhart*.[17]

Briefly, this case involved a father and two minor sons, all three employees in a cotton mill. The father sought to enjoin enforcement of the act.

The Court invalidated the act first, because it was not a regulation of interstate commerce. Unlike lottery tickets or misbranded food, cotton products were in themselves harmless; and such regulation did not serve to promote the efficiency and safety of interstate commerce. Secondly, the law was deemed a regulation of manufacturing and as such encroached upon the reserved powers of the states contrary to the 10th Amendment.

In this case, Mr. Justice Holmes gave one of his classic dissents. He declared that 'It would not be argued today that the power to regulate does not include the power to prohibit. Regulation means the prohibition of something, and when interstate commerce is the matter to be regulated, I cannot doubt that the regulation may prohibit any part of such commerce that Congress sees fit to forbid.'[18]

Hammer v. *Dagenhart* was not specifically overruled until the Supreme Court's decision in the Darby case; however, in time, the Court began to recognize the validity of Mr. Holmes's view, and the view of Chief Justice Marshall in *Gibbons* v. *Ogden*, namely, that the power of Congress over interstate commerce is plenary, complete, and full.[19]

In conclusion, the Supreme Court in the Darby case overruled a long-standing

[13] 312 U.S. 100, 111 (1941).
[14] Ibid. 111-12.
[15] 247 U.S. 251.
[16] The Keating-Owen Act, 39 Stat. 675 (1916).
[17] 247 U.S. 251 (1918).
[18] Ibid. pp. 277-8.
[19] See, for example, *Mulford* v. *Smith*, 307 U.S. 38 (1939).

interpretation of the 10th Amendment which had been given classic form in *Hammer* v. *Dagenhart*. 'The amendment,' says Swisher, 'was read in early decisions as if it meant that the exercise of a power granted to the federal government must stop at the point at which it began encroachment upon matters which had traditionally been regarded as under local jurisdiction.' [20] The Darby decision, continues Swisher, 'makes it clear that the traditional sphere of state activity is immune from federal invasion only to the extent that the right of the invader is limited to the exercise of some power directly given or implied in the Constitution.' [21]

UNITED STATES v. DARBY

312 U.S. 100 (1941)

MR. JUSTICE STONE delivered the opinion of the Court.

The two principal questions raised by the record in this case are, *first*, whether Congress has constitutional power to prohibit the shipment in interstate commerce of lumber manufactured by employees whose wages are less than a prescribed minimum or whose weekly hours of labor at that wage are greater than a prescribed maximum, and, *second*, whether it has power to prohibit the employment of workmen in the production of goods 'for interstate commerce' at other than prescribed wages and hours. A subsidiary question is whether in connection with such prohibitions Congress can require the employer subject to them to keep records showing the hours worked each day and week by each of his employees including those engaged 'in the production and manufacture of goods to-wit, lumber, for "interstate commerce."'

Appellee demurred to an indictment found in the district court for southern Georgia charging him with violation of § 15 (a) (1) (2) and (5) of the Fair Labor Standards Act of 1938; 52 Stat. 1060, 29 U.S.C. § 201, *et seq*. The district court sustained the demurrer and quashed the indictment and the case comes here on direct appeal under § 238 of the Judicial Code as amended, 28 U.S.C. § 345, and § 682, Title 18 U.S.C., 34 Stat. 1246, which authorizes an appeal to this Court when the judgment sustaining the demurrer 'is based upon the invalidity or construction of the statute upon which the indictment is founded.'

The Fair Labor Standards Act set up a comprehensive legislative scheme for preventing the shipment in interstate commerce of certain products and commodities produced in the United States under labor conditions as respects wages and hours which fail to conform to standards set up by the Act. Its purpose, as we judicially know from the declaration of policy in § 2 (a) of the Act, and the reports of Congressional committees proposing the legislation, S. Rept. No. 884, 75th Cong. 1st Sess.; H. Rept. No. 1452, 75th Cong. 1st Sess.; H. Rept. No. 2182, 75th Cong. 3d Sess., Conference Report, H. Rept. No. 2738, 75th Cong. 3d Sess., is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce, under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard

[20] *The Growth of Constitutional Power in the United States*, Chicago, 1946, p. 34.
[21] Ibid. p. 36.

labor conditions among the workers of the several states. The Act also sets up an administrative procedure whereby those standards may from time to time be modified generally as to industries subject to the Act or within an industry in accordance with specified standards, by an administrator acting in collaboration with 'Industry Committees' appointed by him.

Section 15 of the statute prohibits certain specified acts and § 16 (a) punishes willful violation of it by a fine of not more than $10,000 and punishes each conviction after the first by imprisonment of not more than six months or by the specified fine or both. Section 15 (1) makes unlawful the shipment in interstate commerce of any goods 'in the production of which any employee was employed in violation of section 6 or section 7,' which provide, among other things, that during the first year of operation of the Act a minimum wage of 25 cents per hour shall be paid to employees 'engaged in [interstate] commerce or the production of goods for [interstate] commerce,' § 6, and that the maximum hours of employment for employees 'engaged in commerce or the production of goods for commerce' without increased compensation for overtime, shall be forty-four hours a week. § 7.

Section 15 (a) (2) makes it unlawful to violate the provisions of §§ 6 and 7 including the minimum wage and maximum hour requirements just mentioned for employees engaged in production of goods for commerce. Section 15 (a) (5) makes it unlawful for an employer subject to the Act to violate § 11 (c) which requires him to keep such records of the persons employed by him and of their wages and hours of employment as the administrator shall prescribe by regulation or order.

The indictment charges that appellee is engaged, in the State of Georgia, in the business of acquiring raw materials, which he manufactures into finished lumber with the intent, when manufactured, to ship it in interstate commerce to customers outside the state, and that he does in fact so ship a large part of the lumber so produced. There are numerous counts charging appellee with the shipment in interstate commerce from Georgia to points outside the state of lumber in the production of which, for interstate commerce, appellee has employed workmen at less than the prescribed minimum wage or more than the prescribed maximum hours without payment to them of any wage for overtime. Other counts charge the employment by appellee of workmen in the production of lumber for interstate commerce at wages at less than 25 cents an hour or for more than the maximum hours per week without payment to them of the prescribed overtime wage. Still another count charges appellee with failure to keep records showing the hours worked each day a week by each of his employees as required by § 11 (c) and the regulation of the administrator, Title 29, Ch. 5, Code of Federal Regulations, Part 516, and also that appellee unlawfully failed to keep such records of employees engaged 'in the production and manufacture of goods, to-wit lumber, for interstate commerce.'

The demurrer, so far as now relevant to the appeal, challenged the validity of the Fair Labor Standards Act under the Commerce Clause and the Fifth and Tenth Amendments. The district court quashed the indictment in its entirety upon the broad grounds that the Act, which it interpreted as a regulation of manufacture within the states, is unconstitutional. It declared that manufacture is not interstate commerce and that the regulation by the Fair Labor Standards Act of wages and hours of employment of those engaged in the manufacture of goods which it is intended at the time of production 'may or will be' after production 'sold in interstate commerce in part or in whole' is

not within the congressional power to regulate interstate commerce.

The effect of the court's decision and judgment is thus to deny the power of Congress to prohibit shipment in interstate commerce of lumber produced for interstate commerce under the proscribed substandard labor conditions of wages and hours, its power to penalize the employer for his failure to conform to the wage and hour provisions in the case of employees engaged in the production of lumber which he intends thereafter to ship in interstate commerce in part or in whole according to the normal course of his business and its power to compel him to keep records of hours of employment as required by the statute and the regulations of the administrator.

The case comes here on assignments by the Government that the district court erred insofar as it held that Congress was without constitutional power to penalize the acts set forth in the indictment, and appellee seeks to sustain the decision below on the grounds that the prohibition by Congress of those Acts is unauthorized by the Commerce Clause and is prohibited by the Fifth Amendment. The appeal statute limits our jurisdiction on this appeal to a review of the determination of the district court so far only as it is based on the validity or construction of the statute. *United States* v. *Borden Co.*, 308 U.S. 188, 193-195, and cases cited. Hence we accept the district court's interpretation of the indictment and confine our decision to the validity and construction of the statute.

The prohibition of shipment of the proscribed goods in interstate commerce. Section 15 (a) (1) prohibits, and the indictment charges, the shipment in interstate commerce, of goods produced for interstate commerce by employees whose wages and hours of employment do not conform to the requirements of the Act. Since this section is not violated unless the commodity shipped has been produced under labor conditions prohibited by § 6 and § 7, the only question arising under the commerce clause with respect to such shipments is whether Congress has the constitutional power to prohibit them.

While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power 'to prescribe the rule by which commerce is governed.' *Gibbons* v. *Ogden*, 9 Wheat. 1, 196. It extends not only to those regulations which aid, foster and protect the commerce, but embraces those which prohibit it. *Reid* v. *Colorado*, 187 U.S. 137; *Lottery Case*, 188 U.S. 321; *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366; *Hoke* v. *United States*, 227 U.S. 308; *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U.S. 311; *United States* v. *Hill*, 248 U.S. 420; *McCormick & Co.* v. *Brown*, 286 U.S. 131. It is conceded that the power of Congress to prohibit transportation in interstate commerce includes noxious articles, *Lottery Case, supra; Hipolite Egg Co.* v. *United States*, 220 U.S. 45; cf. *Hoke* v. *United States, supra;* stolen articles, *Brooks* v. *United States*, 267 U.S. 432; kidnapped persons, *Gooch* v. *United States*, 297 U.S. 124, and articles such as intoxicating liquor or convict made goods, traffic in which is forbidden or restricted by the laws of the state of destination. *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U.S. 334.

But it is said that the present prohibition falls within the scope of none of these categories; that while the prohibition is nominally a regulation of the commerce its motive or purpose is regulation of wages and hours of persons engaged in manufacture, the control of which has been reserved to the states and upon which Georgia and some of the states of destination have placed no restriction; that the effect of the present statute is not to exclude the proscribed articles from inter-

state commerce in aid of state regulation as in *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co., supra,* but instead, under the guise of a regulation of interstate commerce, it undertakes to regulate wages and hours within the state contrary to the policy of the state which has elected to leave them unregulated.

The power of Congress over interstate commerce 'is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.' *Gibbons* v. *Ogden, supra,* 196. That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co., supra.* Congress, following its own conception of public policy concerning the restrictions which may appropriately be imposed on interstate commerce, is free to exclude from the commerce articles whose use in the states for which they are destined it may conceive to be injurious to the public health, morals or welfare, even though the state has not sought to regulate their use. . .

Such regulation is not a forbidden invasion of state power merely because either its motive or its consequence is to restrict the use of articles of commerce within the states of destination; and is not prohibited unless by other Constitutional provisions. It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. . .

The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. The motive and purpose of a regulation of interstate commerce are matters for the legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control. *McCray* v. *United States,* 195 U.S. 27; *Sonzinsky* v. *United States,* 300 U.S. 506, 513 and cases cited. 'The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged power.' *Veazie Bank* v. *Fenno,* 8 Wall. 533. Whatever their motive and purpose, regulations of commerce which do not infringe some constitutional prohibition are within the plenary power conferred on Congress by the Commerce Clause. Subject only to that limitation, presently to be considered, we conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

In the more than a century which has elapsed since the decision of *Gibbons* v. *Ogden,* these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in *Hammer* v. *Dagenhart,* 247 U.S. 251. In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court's opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution.

Hammer v. *Dagenhart* has not been followed. The distinction on which the decision was rested that Congressional power

to prohibit interstate commerce is limited to articles which in themselves have some harmful or deleterious property—a distinction which was novel when made and unsupported by any provision of the Constitution—has long since been abandoned. *Brooks* v. *United States, supra; Kentucky Whip & Collar Co.* v. *Illinois Central R. Co., supra; Electric Bond & Share Co.* v. *Securities & Exchange Comm'n,* 303 U.S. 419; *Mulford* v. *Smith,* 307 U.S. 38. The thesis of the opinion that the motive of the prohibition or its effect to control in some measure the use or production within the states of the article thus excluded from the commerce can operate to deprive the regulation of its constitutional authority has long since ceased to have force. *Reid* v. *Colorado, supra; Lottery Case, supra; Hipolite Egg Co.* v. *United States, supra; Seven Cases* v. *United States, supra,* 514; *Hamilton* v. *Kentucky Distilleries & Warehouse Co., supra,* 156; *United States* v. *Carolene Products Co., supra,* 147. And finally we have declared 'The authority of the federal government over interstate commerce does not differ in extent or character from that retained by the states over intrastate commerce.' *United States* v. *Rock Royal Co-operative,* 307 U.S. 533, 569.

The conclusion is inescapable that *Hammer* v. *Dagenhart,* was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled.

Validity of the wage and hour requirements. Section 15 (a) (2) and §§ 6 and 7 require employers to conform to the wage and hour provisions with respect to all employees engaged in the production of goods for interstate commerce. As appellee's employees are not alleged to be 'engaged in interstate commerce' the validity of the prohibition turns on the question whether the employment, under other than the prescribed labor standards, of employees engaged in the production of goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the power of Congress to regulate it.

To answer this question we must at the outset determine whether the particular acts charged in the counts which are laid under § 15 (a) (2) as they were construed below, constitute 'production for commerce' within the meaning of the statute. As the Government seeks to apply the statute in the indictment, and as the court below construed the phrase 'produced for interstate commerce,' it embraces at least the case where an employer engaged, as is appellee, in the manufacture and shipment of goods in filling orders of extrastate customers, manufactures his product with the intent or expectation that according to the normal course of his business all or some part of it will be selected for shipment to those customers.

Without attempting to define the precise limits of the phrase, we think the acts alleged in the indictment are within the sweep of the statute. The obvious purpose of the Act was not only to prevent the interstate transportation of the proscribed product, but to stop the initial step toward transportation, production with the purpose of so transporting it. Congress was not unaware that most manufacturing businesses shipping their product in interstate commerce make it in their shops without reference to its ultimate destination and then after manufacture select some of it for shipment interstate and some intrastate according to the daily demands of their business, and that it would be practically impossible, without disrupting manufacturing businesses, to restrict the prohibited kind of production to the particular pieces of lumber, cloth, furniture or the like which later move in interstate rather than intrastate

commerce. Cf. *United States* v. *New York Central R. Co.*, 272 U.S. 457, 464.

The recognized need of drafting a workable statute and the well known circumstances in which it was to be applied are persuasive of the conclusion, which the legislative history supports, S. Rept. No. 884, 75th Cong. 1st Sess., pp. 7 and 8; H. Rept. No. 2738, 75th Cong. 3d Sess., p. 17, that the 'production for commerce' intended includes at least production of goods, which, at the time of production, the employer, according to the normal course of his business, intends or expects to move in interstate commerce although, through the exigencies of the business, all of the goods may not thereafter actually enter interstate commerce.

There remains the question whether such restriction on the production of goods for commerce is a permissible exercise of the commerce power. The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce. See *McCulloch* v. *Maryland*, 4 Wheat. 316, 421. Cf. *United States* v. *Ferger*, 250 U.S. 199.

While this Court has many times found state regulation of interstate commerce, when uniformity of its regulation is of national concern, to be incompatible with the Commerce Clause even though Congress has not legislated on the subject, the Court has never implied such restraint on state control over matters intrastate not deemed to be regulations of interstate commerce or its instrumentalities even though they affect the commerce. *Minnesota Rate Cases*, 230 U.S. 352, 398 *et seq.*, and case cited; 410 *et seq.*, and cases cited. In the absence of Congressional legislation on the subject state laws which are not regulations of the commerce itself or its instrumentalities are not forbidden even though they affect interstate commerce. *Kidd* v. *Pearson*, 128 U.S. 1; *Bacon* v. *Illinois*, 227 U.S. 504; *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245; *Oliver Iron Co.* v. *Lord*, 262 U.S. 172.

But it does not follow that Congress may not by appropriate legislation regulate intrastate activities where they have a substantial effect on interstate commerce. See *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U.S. 453, 466. A recent example is the National Labor Relations Act for the regulation of employer and employee relations in industries in which strikes, induced by unfair labor practices named in the Act, tend to disturb or obstruct interstate commerce. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 38, 40; *National Labor Relations Board* v. *Fainblatt*, 306 U.S. 601, 604, and cases cited. But long before the adoption of the National Labor Relations Act this Court had many times held that the power of Congress to regulate interstate commerce extends to the regulation through legislative action of activities intrastate which have a substantial effect on the commerce or the exercise of the Congressional power over it.

In such legislation Congress has sometimes left it to the courts to determine whether the intrastate activities have the prohibited effect on the commerce, as in the Sherman Act. It has sometimes left it to an administrative board or agency to determine whether the activities sought to be regulated or prohibited have such effect, as in the case of the Interstate Commerce Act, and the National Labor Relations Act, or whether they come within the statutory definition of the prohibited Act, as in the Federal Trade Commission Act. And sometimes Congress itself had said that a particular activity affects the commerce, as it did in the present Act, the Safety Appliance Act and the Railway

Labor Act. In passing on the validity of legislation of the class last mentioned the only function of courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power. See *United States* v. *Ferger, supra; Virginian Ry. Co.* v. *Federation,* 300 U.S. 515, 553.

Congress, having by the present Act adopted the policy of excluding from interstate commerce all goods produced for the commerce which do not conform to the specified labor standards, it may choose the means reasonably adapted to the attainment of the permitted end, even though they involve control of intrastate activities. Such legislation has often been sustained with respect to powers, other than the commerce power granted to the national government, when the means chosen, although not themselves within the granted power, were nevertheless deemed appropriate aids to the accomplishment of some purpose within an admitted power of the national government. See *Jacob Ruppert, Inc.* v. *Caffey,* 251 U.S. 264; *Everard's Breweries* v. *Day,* 265 U.S. 545, 560; *Westfall* v. *United States,* 274 U.S. 256, 259. As to state power under the Fourteenth Amendment, compare *Otis* v. *Parker,* 187 U.S. 606, 609; *St. John* v. *New York,* 201 U.S. 633; *Purity Extract & Tonic Co.* v. *Lynch,* 226 U.S. 192, 201-2. A familiar like exercise of power is the regulation of intrastate transactions which are so commingled with or related to interstate commerce that all must be regulated if the interstate commerce is to be effectively controlled. *Shreveport Case,* 234 U.S. 342; *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.,* 257 U.S. 563; *United States* v. *New York Central R. Co., supra,* 464; *Currin* v. *Wallace,* 306 U.S. 1; *Mulford* v. *Smith, supra.* Similarly Congress may require inspection and preventive treatment of all cattle in a disease infected area in order to prevent shipment in interstate commerce of some of the cattle without the treatment. *Thornton* v. *United States,* 271 U.S. 414. It may prohibit the removal, at destination, of labels required by the Pure Food & Drugs Act to be affixed to articles transported in interstate commerce. *McDermott* v. *Wisconsin,* 228 U.S. 115. And we have recently held that Congress in the exercise of its power to require inspection and grading of tobacco shipped in interstate commerce may compel such inspection and grading of all tobacco sold at local auction rooms from which a substantial part but not all of the tobacco sold is shipped in interstate commerce. *Currin* v. *Wallace, supra,* 11, and see to the like effect *United States* v. *Rock Royal Co-op., supra,* 568, note 37.

We think also that § 15 (a) (2), now under consideration, is sustainable independently of § 15 (a) (1), which prohibits shipment or transportation of the proscribed goods. As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced with those produced under the prescribed or better labor conditions; and the consequent dislocation of the commerce itself caused by the impairment or destruction of local businesses by competition made effective through interstate commerce. The Act is thus directed at the suppression of a method or kind of competition in interstate commerce which it has in effect condemned as 'unfair,' as the Clayton Act has condemned other 'unfair methods of competition' made effective through interstate commerce. See *Van Camp & Sons Co.* v. *American Can Co.,* 278 U.S. 245; *Federal Trade Comm'n* v. *Keppel & Bro.,* 291 U.S. 304.

The Sherman Act and the National Labor Relations Act are familiar examples of the exertion of the commerce power to prohibit or control activities wholly intrastate because of their effect on interstate commerce. See as to the Sherman Act,

Northern Securities Co. v. *United States,* 193 U.S. 197; *Swift & Co.* v. *United States,* 196 U.S. 375; *United States* v. *Patten,* 226 U.S. 525; *United Mine Workers* v. *Coronado Coal Co.,* 259 U.S. 344; *Local No.* 167 v. *United States,* 291 U.S. 293; *Stevens Co.* v. *Foster & Kleiser Co.,* 311 U.S. 255. As to the National Labor Relations Act, see *National Labor Relations Board* v. *Fainblatt, supra,* and cases cited.

The means adopted by § 15 (a) (2) for the protection of interstate commerce by the suppression of the production of the condemned goods for interstate commerce is so related to the commerce and so affects it as to be within the reach of the commerce power. See *Currin* v. *Wallace, supra,* 11. Congress, to attain its objective in the suppression of nationwide competition in interstate commerce by goods produced under substandard labor conditions, has made no distinction as to the volume or amount of shipments in the commerce or of production for commerce by any particular shipper or producer. It recognized that in present day industry, competition by a small part may affect the whole and that the total effect of the competition of many small producers may be great. See H. Rept. No. 2182, 75th Cong. 1st Sess., p. 7. The legislation aimed at a whole embraces all its parts. Cf. *National Labor Relations Board* v. *Fainblatt, supra,* 606.

So far as *Carter* v. *Carter Coal Co.,* 298 U.S. 238, is inconsistent with this conclusion, its doctrine is limited in principle by the decisions under the Sherman Act and the National Labor Relations Act, which we have cited and which we follow. . .

Our conclusion is unaffected by the Tenth Amendment which provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers. See e.g., II Elliot's Debates, 123, 131; III *id.* 450, 464, 600; IV *id.* 140, 149; I Annals of Congress, 432, 761, 767-8; Story, Commentaries on the Constitution, §§ 1907-1908.

From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 324, 325; *McCulloch* v. *Maryland, supra,* 405, 406; *Gordon* v. *United States,* 117 U.S. 697, 705; *Lottery Case, supra; Northern Securities Co.* v. *United States, supra,* 344-345; *Everard's Breweries* v. *Day, supra,* 558; *United States* v. *Sprague,* 282 U.S. 716, 733; see *United States* v. *The Brigantine William,* 28 Fed. Cas. No. 16,700, p. 622. Whatever doubts may have arisen of the soundness of that conclusion, they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited. . .

Validity of the requirement of records of wages and hours. § 15 (a) (5) and § 11 (c). These requirements are incidental to those for the prescribed wages and hours, and hence validity of the former turns on validity of the latter. Since, as we have held, Congress may require production for interstate commerce to conform to those conditions, it may require the employer, as a means of enforcing the valid law, to keep a record showing whether he has in fact complied with it. The requirement for records even of the intrastate trans-

action is an appropriate means to the legitimate end. See *Baltimore & Ohio R. Co.* v. *Interstate Commerce Comm'n*, 221 U.S. 612; *Interstate Commerce Comm'n* v. *Goodrich Transit Co.*, 224 U.S. 194; *Chicago Board of Trade* v. *Olsen*, 262 U.S. 1, 42.

Validity of the wage and hour provisions under the Fifth Amendment. Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of 'not less than one and one-half times the regular rate' at which the worker is employed. Since our decision in *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379, it is no longer open to question that the fixing of a minimum wage is within the legislative power and that the bare fact of its exercise is not a denial of due process under the Fifth more than under the Fourteenth Amendment. Nor is it any longer open to question that it is within the legislative power to fix maximum hours. *Holden* v. *Hardy*, 169 U.S. 366; *Muller* v. *Oregon*, 208 U.S. 412; *Bunting* v. *Oregon*, 243 U.S. 426; *Baltimore & Ohio R. Co.* v. *Interstate Commerce Comm'n, supra*. Similarly the statute is not objectionable because applied alike to both men and women. Cf. *Bunting* v. *Oregon*, 243 U.S. 426.

The Act is sufficiently definite to meet constitutional demands. One who employs persons, without conforming to the prescribed wage and hour conditions, to work on goods which he ships or expects to ship across state lines, is warned that he may be subject to the criminal penalties of the Act. No more is required. *Nash* v. *United States*, 229 U.S. 373, 377.

We have considered, but find it unnecessary to discuss other contentions.

Reversed.