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Labor Law--Jurisdiction of N.L.R.B.--Interstate Commerce (Santa Cruz Fruit Packing Company v. National Labor Relations Board, 58 S. Ct. 656 (1938))

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stant case. This result seems logical, for the Legislature in enacting Section 876-a of the Civil Practice Act has in effect declared the policy of New York, in respect to labor disputes, to be similar to that of the federal courts.

W. F. P.

LABOR LAW—JURISDICTION OF N. L. R. B.—INTERSTATE COMMERCE.—Petitioner was engaged at its plant at Oakland, California, in canning, packing and shipping fruit and vegetables, the bulk of which were grown in California. Interstate and foreign sales approximated one-third of the total sales, and were shipped either *f.o.b.* or *c.i.f.* San Francisco. Many of the permanent warehousemen in petitioner's employ were prevented from entering the plant after attending a union meeting. A picket line then formed, and was maintained with such effectiveness that interstate and export shipments virtually ceased. The National Labor Relations Board found that petitioner had violated the National Labor Relations Act¹ by engaging in unfair labor practices² which had led, and tended to lead, to labor disputes burdening and obstructing commerce. The Board ordered petitioner to desist from such practices and to reinstate with back pay certain employees who had been discharged.³ Upon petition of the Board, the Circuit Court of Appeals affirmed the order.⁴ On appeal to the United States Supreme Court, *held*, affirmed. The Board has jurisdiction inasmuch as the effect of petitioner's activities was to obstruct interstate and foreign commerce. *Santa Cruz Fruit Packing Company v. National Labor Relations Board*, 303 U. S. —, 58 Sup. Ct. 656 (1938).

The subject of federal control is commerce with foreign nations and among the several states.⁵ Sales to purchasers in another state are not withdrawn from federal control because the goods are delivered *f.o.b.* at stated points within the state of origin.⁶ Therefore petitioner

¹ 49 STAT. 449 (1935), 29 U. S. C. A. § 151 (Supp. 1937); Legis. (1936) 10 ST. JOHN'S L. REV. 359.

² 49 STAT. 452 (1935), 29 U. S. C. A. § 157 (Supp. 1937) (Labor is recognized to have the right to organize); 49 STAT. 452 (1935), 29 U. S. C. A. § 158 (Supp. 1937) (Employers are forbidden to interfere with labor's rights. Such interference is termed an unfair labor practice).

³ 1 N. L. R. B. 454 (1936).

⁴ 91 F. (2d) 790 (C. C. A. 9th, 1937).

⁵ U. S. CONST. ART. I, § 8, subd. 3, "Congress shall have power * * * to regulate commerce with foreign nations, and among the several states * * *"

⁶ *Savage v. Jones*, 225 U. S. 501, 32 Sup. Ct. 715 (1912); *Texas & N. O. R. R. v. Sabine Tram Co.*, 227 U. S. 111, 33 Sup. Ct. 229 (1913); "* * * the arrangements that are made between the seller and purchaser with respect to the place of taking title to the commodity, or as to the payment of freight where the actual movement is interstate, does not affect either the power of Congress or the jurisdiction of the Commission which Congress has established."

was directly engaged in interstate and foreign commerce.⁷ Congress has power to protect interstate commerce from burdens, obstructions and interruptions, whatever may be their source.⁸ Activities in relation to productive industry may bring the subject within federal control, although that industry, when separately viewed, is local.⁹ And injurious action burdening and obstructing interstate trade may spring from labor disputes,¹⁰ irrespective of the origin of the materials used in the manufacturing process.¹¹

But Congress may not control all activities which affect interstate commerce; otherwise, the constitutional limitations on federal power would disappear.¹² The case of *Carter v. Carter Coal Company*¹³ attempted to set up as the test of federal control, whether the activity affects commerce proximately.¹⁴ This rule eliminated the power of Congress to regulate labor conditions in most, if not in all industries and has met with much criticism.¹⁵ It is clear that the

Pennsylvania R. R. v. Clark Coal Mining Co., 238 U. S. 456, 468, 35 Sup. Ct. 896, 900 (1915).

⁷ *Ibid.* "Commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Co. v. United States*, 196 U. S. 375, 398, 25 Sup. Ct. 276, 280 (1905); *Rearick v. Pennsylvania*, 203 U. S. 507, 512, 27 Sup. Ct. 159, 160 (1906).

⁸ *Second Employer's Liability Cases*, 223 U. S. 1, 51, 32 Sup. Ct. 169, 175 (1912).

⁹ *Standard Oil Co. v. United States*, 221 U. S. 1, 31 Sup. Ct. 502 (1911); *United States v. American Tobacco Co.*, 221 U. S. 106, 31 Sup. Ct. 632 (1911). The constitutional validity of the National Labor Relations Act was sustained upon this principle in *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 Sup. Ct. 615 (1937).

¹⁰ *Virginia Railway Clerks v. System Federation*, 300 U. S. 515, 57 Sup. Ct. 592 (1937); see *Texas & N. O. R. R. v. Railway Clerks*, 281 U. S. 548, 570, 50 Sup. Ct. 427, 434 (1930); *Schechter Corp. v. United States*, 295 U. S. 495, 544, 545, 55 Sup. Ct. 837, 849, 850 (1935).

¹¹ In *Loewe v. Lawler*, 208 U. S. 274, 28 Sup. Ct. 301 (1908) the conspiracy of the "United Hatters" to compel the plaintiffs to unionize their factory was held to fall within the Federal Anti-Trust Act because it was aimed at the destruction of interstate trade in manufactured hats. In *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 408, 42 Sup. Ct. 570, 582 (1922) the court said, "* * * 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"; *The Second Coronado Case*, 268 U. S. 295, 45 Sup. Ct. 551 (1925); *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association*, 274 U. S. 37, 47 Sup. Ct. 522 (1927).

¹² *Schechter Corp. v. United States*, 295 U. S. 495, 554, 55 Sup. Ct. 837, 853 (1935) ("Activities local in their immediacy do not become interstate and national because of distant repercussions").

¹³ 298 U. S. 238, 56 Sup. Ct. 855 (1936); (1936) 11 ST. JOHN'S L. REV. 107.

¹⁴ The word "direct" implies that the activity invoked shall proximately—not mediately, remotely or collaterally—produce the effect without the presence of any efficient intervening agency or condition. The distinction between a direct and an indirect effect upon interstate commerce is independent of the magnitude of the effect or its cause. There is no question of degree involved. *Carter v. Carter Coal Co.*, 298 U. S. 238, 307, 308, 56 Sup. Ct. 855, 871, 872 (1936).

¹⁵ The burdens upon interstate commerce resulting from struggles between employers and employees over wages, working conditions, *the right of collective*

wages and hours of employees do not affect commerce "proximately". In the subsequent case of *National Labor Relations Board v. Jones & Laughlin Steel Corporation*,¹⁶ the court held that Congress had the right to control "collective bargaining" which fitted into the definition of "proximity" adopted in the *Carter* case. In the *Laughlin Steel* case the rule is stated that when such burdens on commerce are intrastate activities, they are subject to federal control if there is a close and substantial relation to interstate commerce.¹⁷ If commerce is affected seriously and unduly, Congress may regulate that activity; the criterion is one of degree,¹⁸ rather than a proximate test.¹⁹ It is immaterial that petitioner's sales in interstate and foreign commerce amounted to one-third and not to more than one-half of its production. The controlling question is "whether the unfair labor practices involved have such a close and substantial relation to the freedom of interstate commerce from injurious restraint that these practices may

bargaining, etc., and the resulting strikes and curtailment of production, however extensive such evils may be, affect interstate commerce indirectly. They are local evils over which the Federal Government has no legislative control. *Carter v. Carter Coal Co.*, 298 U. S. 238, 308, 56 Sup. Ct. 855 (1936).

"This decision * * * (has) been denounced as creating a 'no man's land' where neither federal nor state government may regulate labor conditions. In effect, this 'no man's land' becomes the domain of property, the sanctity of which cannot be invaded by legislation espousing the needs of labor. And so it is that legislative power has been made sterile by (this) decision rendered by a five to four vote." (1936) 11 ST. JOHN'S L. REV. 108.

¹⁶ 301 U. S. 1, 41, 57 Sup. Ct. 615, 625 (1937): "The fact remains that stoppage of these operations by industrial strife would have a most serious effect upon interstate commerce * * *. It is idle to say the effect would be indirect or remote." See (1937) 12 ST. JOHN'S L. REV. 129.

¹⁷ Instant case at —, 58 Sup. Ct. at 660, 661.

¹⁸ Instant case at —, 58 Sup. Ct. at 660: "To express this essential distinction, 'direct' has been contrasted with 'indirect', and what is 'remote' or 'distant' with what is 'close and substantial'. * * * This does not satisfy those who seek for mathematical or rigid formulas. * * * In maintaining the balance of the constitutional grants and limitations it is inevitable that we should define their application in the gradual process of inclusion and exclusion." See N. L. R. B. v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37, 57 Sup. Ct. 615, 624 (1937).

¹⁹ See (1937) 12 ST. JOHN'S L. REV. 129. The criterion of degree is no novel rule; it is constantly met in other relations. It is met whenever the Interstate Commerce Commission is required to find whether an intrastate rate or practice of an interstate carrier causes an undue and unreasonable discrimination against interstate or foreign commerce (49 U. S. C. § 13, subd. 4; *The Shreveport Case*, 234 U. S. 342, 351, 34 Sup. Ct. 833, 836 (1914)). It is met under the Federal Employer's Liability Act, where the question is whether the employee's occupation at the time of his injury is "in interstate transportation or work so closely related to such transportation as to be practically a part of it." *Chicago & Northwestern Ry. v. Bolle*, 284 U. S. 74, 78, 79, 52 Sup. Ct. 59, 61 (1931); *New York, New Haven & Hartford R. R. v. Bezue*, 284 U. S. 415, 420, 52 Sup. Ct. 205, 207 (1932). It is met in the enforcement of the Clayton Act in determining whether the effect of the described provisions in contracts for the sale of commodities is "to substantially lessen competition". *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U. S. 346, 356, 357, 42 Sup. Ct. 360, 362 (1922); *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, 647, 648, 51 Sup. Ct. 587, 589, 590 (1931).

constitutionally be made the subject of federal control. * * *²⁰ And the fact that petitioner's activities resulted in a strike which virtually eliminated its interstate and foreign shipments shows that the instant case conforms to that test.

B. M. B.

LABOR LAW—NATIONAL LABOR RELATIONS BOARD—ORDER REQUIRING AN EMPLOYER TO WITHDRAW RECOGNITION OF A COMPANY UNION.—The defendant, an employer, was found by the Board to have violated the National Labor Relations Act by organizing, supporting and dominating a company union.¹ Plaintiff charged that defendant's representatives had an active part in planning and devising the by-laws of the company union with the intention of defeating any subsequent collective demands of the employees. As a result, the company union did not serve as a collective bargaining agency but merely as an instrument to settle individual grievances. In addition, it was claimed that defendant's officers employed coercion and threats repeatedly to thwart the employees' efforts to freely seek self-organization of their own choosing. The Board ordered defendant to desist from its unfair labor practices; to withdraw recognition of the company union; and to post notices that the union has been so "disestablished". The Circuit Court of Appeals affirmed the "desist order", but set aside the "withdrawal order", holding that the Board acted without authority. The Supreme Court *held*, reversed. The "withdrawal order" is lawful under Section 10-c of the National Labor Relations Act² giving the Board power to order an employer who has been guilty of unfair labor practices, "to take such affirmative action * * * as will effectuate the policies of this Act." The facts when supported by evidence justify the Board's action to enforce a withdrawal order when it can draw an inference that the continued recognition of the company union would remain an obstacle to the employees' right of self-organization and to bargain collectively through representatives of their own choosing. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 58 Sup. Ct. 571 (1938).

There are two germane elements which the court must consider in determining whether the Board's "withdrawal order" shall be en-

²⁰ Instant case at —, 58 Sup. Ct. at 661.

¹ 49 STAT. 452, 29 U. S. C. A. § 158 (1, 2) (Supp. 1935): "It shall be an unfair practice for an employer—1. To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in sec. 157 of this title; 2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

² 49 STAT. 453, 29 U. S. C. A. § 160 (c) (Supp. 1935).