NLRB V. JONES & LAUGHLIN STEEL CORP. (1937)

NLRB v. Jones *is significant because it allows the national government to take a more active role in commercial matters. The Court broadens its interpretation of the Commerce Clause and fundamentally alters the balance of power between the states and national government.*

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 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 scheme of the National Labor Relations Act-which is too long to be quoted in full-may be briefly stated. The first section (29 U.S.C.A. 151) sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of 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 [301 U.S. 1, 24] then defines the terms it uses, including the terms 'commerce' and 'affecting commerce.' Section 2 (29 U.S.C.A. 152). It creates the National Labor Relations Board and prescribes its organization. Sections 3- 6 (29 U.S.C.A. 153-156). It sets forth the right of employees to self- organization and to bargain collectively through representatives of their own choosing. Section 7 (29 U.S.C.A. 157). It defines 'unfair labor practices.' Section 8 (29 U.S.C.A. 158). It lays down rules as to the representation of employees for the purpose of collective bargaining. Section 9 (29 U.S.C.A. 159). The Board is empowered to prevent the described unfair labor practices affecting commerce and the act prescribes the procedure to that end. The Board is authorized to petition designated courts to secure the enforcement of its order. The findings of the Board as to the facts, if supported by evidence, are to be conclusive. If either party on application to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the Board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order. Section 10 (29 U.S.C.A. 160). The Board has broad powers of investigation. Section 11 (29 U.S.C.A. 161). Interference with members of the Board or its agents in the performance of their duties is punishable by fine and imprisonment. Section 12 (29 U.S.C. A. 162). Nothing in the act is to be construed to interfere with the right to strike. Section 13 (29 U.S.C.A. 163). There is a

separability clause to the effect that, if any provision of the act or its application to any person or circumstances shall be held invalid, the remainder of the act or its application to other persons or circumstances shall not be affected. Section 15 (29 U.S.C.A. 165). The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion….

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

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….

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 13) 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 [301 U.S. 1, 30] 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. 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.

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….

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 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….

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 section 8, subdivisions (1) and (3). These provide:

'Sec. 8. It shall be an unfair labor practice for an employer-

'(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (section 157 of this title)….
'(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.' 4 [301 U.S. 1, 33] Section 8, subdivision (1), refers to section 7, which is as follows:

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

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

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209, 42 S.Ct. 72, 78, 27 A.L.R. 360. We reiterated these views when we had under consideration the Railway Labor Act of 1926, 44 Stat. 577. Fully recognizing the legality of collective action on the part of employees in [301 U.S. 1, 34] 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 & S.S. Clerks*, supra. We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934 (45 U.S.C.A. 151 et seq.). *Virginian Railway Co. v. System Federation*, No. 40, supra.

Third. The application of the Act to Employees Engaged in Production.- The Principle Involved.- Respondent says that, whatever may be said of employees engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not subject to federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce….

The government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving 'a great movement of [301 U.S. 1, 35] iron

ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country-a definite and well-understood course of business.' It is urged that these activities constitute a 'stream' or 'flow' of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the Packers and Stockyards Act. 5 *Stafford v. Wallace*, 258 U.S. 495 , 42 S.Ct. 397, 23 A.L.R. 229. The Court found that the stockyards were but a 'throat' through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for, while they created 'a local change of title,' they did not 'stop the flow,' but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the state to impose a nondiscriminatory tax upon property which the owner intended to transport to another state, but which was not in actual transit and was held within the state subject to the disposition of the owner, the Court remarked: 'The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority….

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

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 [301 U.S. 1, 37] the power to enact 'all appropriate legislation' for its 'protection or advancement'….That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' …Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corporation v. United*

States, supra. Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. The question is necessarily one of degree. As the Court said in *Board of Trade of City of Chicago v. Olsen*, supra, 262 U.S. 1 , at page 37, 43 S.Ct. 470, 477, repeating what had been said in *Stafford v. Wallace*, supra: 'Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and to meet it.'

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who [301 U.S. 1, 38] 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….It is manifest that intrastate rates deal primarily with a local activity. But in rate making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. Id. Under the Transportation Act, 1920,7 Congress went so far as to authorize the Interstate Commerce Commission to establish a state-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce....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….

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 [301 U.S. 1, 42] 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 *Virginia Railway Co. v. System Federation* No. 40, supra, points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act, 'when there was no dispute as to the organizations authorized to represent the employees, and when there was willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided.' That, on the other hand, 'a prolific source of dispute had been the maintenance by the railroads of company unions and the denial by railway management of the authority of representatives chosen by their employees.' The opinion in that case also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But, with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported! [301 U.S. 1, 43] These questions have frequently engaged the attention of Congress and have been the subject of many inquiries. 8 The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences. 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 [301 U.S. 1, 44] right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *Texas & N.O.R. Co. v. Railway S.S. Clerks*, supra;

Virginian Railway Co. v. System Federation No. 40. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. The provision of section 9(a)10 that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit, imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute. This provision has its analogue in section 2, Ninth, of the Railway Labor Act, as amended (45 U.S.C.A. 152, subd. 9), which was under consideration in *Virginian Railway Co. v. System Federation No. 40*, supra. The decree which we affirmed in that case required the railway company to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with 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,11 the injunction against the company's entering into any contract concerning rules, rates of pay and working conditions except with a chosen representative was 'designed only to prevent collective bargaining with any one purporting to represent employees' other than the representative they had selected. It was taken 'to prohibit the negotiation of labor contracts, generally applicable to employees' in the described unit with any other representative than the one so chosen, 'but not as precluding such individual contracts' as the company might 'elect to make directly with individual employees.' We think this construction also applies to section 9(a) of the National Labor Relations Act (29 U.S.C.A. 159(a).

The act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' 12 The act expressly provides in section 9(a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the act in itself does not attempt to compel….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 [301 U.S. 1, 46] 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 criticized as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be

responsible; that it fails to provide a more comprehensive plan,-with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power….The question in such cases is whether the Legislature, in what it does prescribe, has gone beyond constitutional limits….

Our conclusion is that the order of the Board was within its competency and that the act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion. It is so ordered.

Reversed and remanded.