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FEDERAL REGULATION OF LOCAL TRANSACTIONS AFFECTING INTERSTATE COMMERCE

Consolidated Edison Company of New York v. National Labor Relations Board[1]

In a proceeding under the National Labor Relations Act[2] to restrain alleged unfair labor practices on the part of the petitioners, where the jurisdiction of the National Labor Relations Board was contested on the ground that the petitioners were engaged in intrastate production and distribution of electric power and gas to local consumers, but where it was shown that a small percentage of the petitioners' output was utilized by certain consumers in the maintenance and operation of instrumentalities of interstate commerce, *Held*: (with two justices dissenting[3]) that the National Labor Relations Board had jurisdiction over the petitioners' intrastate operations in order to prevent labor disputes which might result in disrupting the petitioners' service, hampering and obstructing the interstate activities of the petitioners' customers.[4]

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[1] 59 S. Ct. 206 (1938).

[2] 49 Stat. 449 (1935); 29 U. S. C. A. 151 *et seq.*

[3] Justices Butler and McReynolds dissented on this point, 59 S. Ct. 206, 221.

[4] In addition to the question of jurisdiction, the point with which this note is concerned, the case also involved a consideration of procedural due process in the fairness of the hearings before the board and the sufficiency of the evidence, and the power of the board to abrogate contracts between the employer and an independent labor organization without notice to that union. From the majority's opinion adverse to the board on the latter point, Justices Reed and Black dissented, 59 S. Ct. 206, 224.

For additional discussion of the jurisdiction element of the case, see (1939) 87 U. Pa. L. Rev. 480, (1939) 24 Iowa L. Rev. 373, (1939) 48 Labor Review 121. For a discussion of the due process point, see (1939) 48 Labor Review 121, 123.

For a discussion of the invalidation of union contracts, see (1939) 6 U. Chi. L. Rev. 319; (1939) 52 Harv. L. Rev. 695, (1939) 48 Labor Review 121, 124.

The petitioners, the Consolidated Edison Company of New York, Inc., and its affiliates, were public utilities serving about three and a half million customers in New York City and Westchester County, New York. While the petitioners received supplies of coal, oil, etc. from without the state, their gas and electricity was sold and transmitted to customers wholly within the State of New York. None of their products was sold for resale in interstate commerce. By far the greater proportion of the petitioners' gas and electricity was utilized for purely local purposes such as residential and domestic use. However, among the petitioners' customers were several railroads which were engaged in interstate commerce and which consumed the electric power supplied by the petitioners in connection with the operation of freight and passenger depots and in the movement of trains. The petitioners furnished the major part of the electricity for New York's airport and for the piers of foreign and coastal steamship lines. Interstate and foreign telephone, telegraph, and radio communications were received and transmitted by use of power supplied by the petitioners. The petitioners' electricity was also utilized by the Federal Government for the operation of lighthouses, beacons, and other navigation aids.

While interstate commerce does not include production and local sales and transactions,[5] it is a familiar principle that industrial and commercial matters which, in themselves, are essentially intrastate but which influence and affect interstate commerce may be subjected to federal regulation. Thus, the jurisdiction of the Federal Government to regulate intrastate freight rates to protect interstate commerce from discrimination has been upheld,[6] and the power of the Federal Government to prevent intrastate trade practices and transactions harmful to interstate commerce[7] or impeding the flow of the "stream of commerce"[8] has been sustained.

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[5] Kidd v. Pearson, 128 U. S. 1, 9 S. Ct. 6, 32 L. Ed. 346 (1888); United States v. E. C. Knight Co., 156 U. S. 1, 15 S. Ct. 249, 39 L. Ed. 325 (1895); see also Utah Light and Power Co. v. Pfost, 286 U. S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

[6] The Shreveport Case, 234 U. S. 342, 34 S. Ct. 833, 58 L. Ed. 1341 (1914); Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, 43 S. Ct. 232, 66 L. Ed. 371 (1922); Florida v. United States, 282 U. S. 194, 51 S. Ct. 119, 75 L. Ed. 291 (1931).

[7] Northern Securities Co. v. United States, 193 U. S. 197, 24 S. Ct. 436, 48 L. Ed. 676 (1904); Loewe v. Lawlor, 208 U. S. 274, 28 S. Ct. 301, 52 L. Ed. 488 (1905); United States v. Brims, 272 U. S. 549, 47 S. Ct. 169, 71 L. Ed. 403 (1926); Bradford Cut Stone Co. v. Journeymen Stone Cutter's Ass'n., 274 U. S. 37, 47 S. Ct. 522, 71 L. Ed. 916 (1927); Standard Oil Co. v. United States, 283 U. S. 163, 51 S. Ct. 421, 75 L.

The power of the national government to safeguard interstate commerce from burdensome intrastate activities and conditions has been limited in its scope to include only those local matters which directly and immediately affect interstate commerce.[9] In *Carter v. Carter Coal Co.*,[10] the test of federal power in this field was reduced to an almost mechanical formula. If the first effect of the intrastate matter or activity were not communicated directly to interstate commerce, but to some intervening agency which in turn transmitted it to interstate commerce, the influence was said to be remote and secondary and the Federal Government to be without jurisdiction, irrespective of the extent or magnitude of the effect upon interstate commerce. Thus, labor relations in the production of coal destined for interstate commerce were held beyond the reach of federal supervision for such labor relations affected coal production immediately and interstate commerce was affected only indirectly.

Within less than a year, however, the test developed and applied in the Carter case was shelved. In *National Labor Relations Board v. Jones and Laughlin Steel Corp.*,[11] the Court declared that the question of whether or not the particular intrastate activity was subject to federal regulation was to be decided not on the basis of the mechanics whereby its influence was brought to bear on interstate commerce but on whether it exerted a "substantial" effect on such commerce. The answer was not to be found in the "intellectual vacuum" of a rigid academic formula but through a factual approach to the problem and a consideration of the degree of influence actually exerted.[12] Applying the standard of "substantial effect", the Court held that federal regulatory jurisdiction might properly be as-

Ed. 926 (1931); Local 167 v. United States, 291 U. S. 293, 54 S. Ct. 396, 78 L. Ed. 804 (1934).

[8] Swift v. United States, 196 U. S. 375, 25 S. Ct. 276, 49 L. Ed. 518 (1905); Stafford v. Wallace, 258 U. S. 495, 42 S. Ct. 397, 66 L. Ed. 735 (1922); Chicago Board of Trade v. Olsen, 262 U. S. 1, 43 S. Ct. 470, 67 L. Ed. 839 (1923); Tagg Bros. & Moorhead v. United States, 280 U. S. 420, 50 S. Ct. 220, 74 L. Ed. 524 (1930).

[9] Schechter Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570 (1935); Carter v. Carter Coal Co., 298 U. S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936).

[10] *Supra*, n. 9.

[11] National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893 (1937).

[12] The Court did not expressly overrule the Carter case, *supra*, note 9, but purported to distinguish it as dealing with regulations which went "beyond any sustainable measure of the protection of interstate commerce," while it declared that in the Schechter case, *supra*, note 9, the effect "was so remote as to be beyond the federal power."

serted over labor relations in local production activities where the raw materials were derived from interstate sources and the major portion of the finished product was destined for interstate commerce.[13] Subsequently, in *Santa Cruz Fruit Packing Company v. National Labor Relations Board*,[14] the Court held that even where the raw materials were locally obtained but where the finished product was sold in interstate commerce to a "substantial extent", local processing and production might be regulated under the National Labor Relations Act. In that case, 37% of the cannery's output was sold in interstate commerce.

In the principal case, the Court declared that the disruption of the facilities of interstate and foreign carriers and communications which might be induced by a discontinuance of service by the petitioners due to industrial strife demonstrated that the effect upon interstate commerce was not remote, but "close" and "intimate". Citing and applying the principles laid down in the *Jones and Laughlin* and *Santa Cruz* cases, the Court characterized influences substantial in degree as immediate and direct.[15] Hence, in order to forestall the burdening and hampering of interstate and foreign commerce, the Federal Government, through the National Labor Relations Board, might assert jurisdiction over labor relations in the petitioners' intrastate public utility enterprises.

It is to be noted that in the principal case the Court expressly recognized that the petitioners sold no power directly in interstate commerce or for resale therein. Furthermore, the Court declared that in reaching its conclusion it attached no significance to the fact that certain of the petitioners' supplies were derived from sources outside of the State of New York. The petitioners were held to be subject to the provisions of the National Labor Relations Act because power sold and transmitted by them to intrastate customers was used, in turn, by certain of these customers in the operation and maintenance of facilities of

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[13] See also: National Labor Relations Board v. Fruehauf Trailer Company, 301 U. S. 49, 57 S. Ct. 642, 81 L. Ed. 918; National Labor Relations Board v. Friedman—Harry Marks Clothing Co., 301 U. S. 58, 57 S. Ct. 645, 81 L. Ed. 921; Associated Press v. National Labor Relations Board, 301 U. S. 103, 57 S. Ct. 650, 81 L. Ed. 953; Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 57 S. Ct. 648, 81 L. Ed. 965, all of which were decided on the same day as the Jones & Laughlin case, *supra*, n. 11.

[14] 303 U. S. 453, 58 S. Ct. 656, 82 L. Ed. 954 (1938).

[15] The majority opinion does not even mention the Schechter and the Carter cases, *supra*, n. 9, but an adherence to these cases formed the basis for the dissent of Justice Butler and Justice McReynolds, 59 S. Ct. 206, 221.

interstate and foreign commerce, and the Court gave no heed to the fact that the power so utilized represented but a comparatively small proportion of the petitioners' total output.[16]

The decision in the principal case, taken in connection with the other Labor Board cases[17] commented upon above, naturally gives rise to an inquiry as to the extent to which the doctrine of "substantial extent" is to be carried. Under the prevailing Supreme Court view, the jurisdiction of the Federal Government over an intrastate industrial enterprise apparently is not hampered by the enterprise's relative unimportance to interstate commerce in goods of the type produced,[18] or by interstate commerce's relative unimportance to the particular producer in absorbing its output or in supplying it with raw materials,[19] or, as in the principal case, by the fact that its goods become identified with interstate commerce through their use by persons other than the producer. While in this group of cases, the jurisdiction asserted by the Federal Government was in the field of labor relations, obviously a parity of reasoning will sustain federal regulation of numerous other aspects of intrastate industrial and commercial activity. In the instant case, the petitioners, insofar as their own activities were concerned, were actually further removed from interstate commerce than any of the industrial units involved in the other cases of this group. The Court found the basis for federal regulatory power in the "substantial" influence exerted over interstate commerce by reason of the use of the petitioners' product therein by certain of the petitioners' customers. What may be said of the importance of availability of electric power to interstate commerce may, by analogy, be applied to a vast multitude of other products and services used and sold therein and upon which the

[16] While state labor relations legislation similar in operation and objectives to that of the Federal Government does not preclude the assertion of paramount federal jurisdiction in this field when interstate commerce is affected, the Court intimated that the existence and enforcement of such State regulation might be viewed as one of the elements of fact to be taken into consideration in determining whether the exercise of federal jurisdiction is justified. However, this question is not directly presented in the principal case as no proceedings had been taken under the New York Labor Relations Act (Laws of 1937, Chapter 443; Art. 20 of the Labor Law, Consol. Laws, C. 31. Sec. 700 *et seq.*

[17] *Supra*, notes 11, 13, 14.

[18] Relatively small and unimportant manufacturing enterprises were involved in the Friedman-Harry Marks case, *supra*, n. 13, and the Santa Cruz case, *supra*, n. 14.

[19] Raw materials and supplies were derived from intrastate sources in the Santa Cruz case, *supra*, note 15. In the principal case, the Court expressly laid aside any consideration of the interstate sources of certain of the petitioners' supplies.

dependence of interstate commerce varies only in degree, if at all, from the need for electric energy illustrated in the principal case. It will require no reversal or modification of the trend of these decisions to sustain extensions of Federal authority into fields which until very recently had been viewed as exclusively local.