entitled to contest its validity in answer to the charge against her. *Smith* v. *Cahoon,* 283 U. S. 553, 562.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed.

MR. JUSTICE CARDOZO took no part in the consideration and decision of this case.

SANTA CRUZ FRUIT PACKING CO. *v.* NATIONAL LABOR RELATIONS BOARD.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 536. Argued March 7, 1938.—Decided March 28, 1938.

1. A corporation was engaged, in California, in the business of canning fruits and vegetables, raised in the State, and in disposing of its large output locally and in interstate and foreign commerce, 37% going to destinations beyond the State, partly on f. o. b. shipment and much of it by water. The goods shipped by boat were carried to the wharves on trucks loaded at the plant by warehousemen employed there. Many of these, upon being locked out by the company for having joined a labor union, formed a picket line, and this was so maintained that eventually the movement of trucks from warehouse to wharves ceased entirely. The teamsters refused to haul, the warehousemen at the dock warehouses declined to handle, and the stevedores between dock and ship refused to load, the company's goods. The National Labor Relations Board found that the discharge of the employees and the refusal to reinstate them constituted an unlawful discrimination under the National Labor Relations Act and that the acts of the company tended to lead, and had led, to labor disputes burdening and obstructing interstate commerce. It ordered the company to desist from such practices, to reinstate, with back pay, the discharged employees, and to post notices, etc. *Held* that the case was within the jurisdiction of the Board and that the order was properly sustained by the Circuit Court of Appeals. Pp. 463 *et seq.*

2. Sales to purchasers in another State are not withdrawn from federal control because the goods are delivered f. o. b. at stated points within the State of origin for transportation. P. 463.
3. The federal power to protect interstate commerce in commodities does not depend upon their kind and has been applied to the practices of manufacturers, processors and labor unions. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, did not establish a different principle or overrule the earlier decisions. P. 466.
4. The power of Congress to protect interstate commerce in manufactured articles from burdens and obstructions springing from labor disputes in the factory is not dependent upon an origin outside of the State of the raw materials used in the manufacturing process; nor is the place where the manufacturer makes his sales a controlling element, if the sales in fact are in interstate commerce. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1. P. 464.
5. Cases respecting the state power to tax goods which have not begun to move in interstate commerce, or have come to rest within the State, or to adopt local police measures affecting them, do not deal with the extent of the power of Congress over interstate commerce but are concerned with the question whether a particular exercise of state power, in view of its nature and operation, must be deemed to be in conflict with that paramount authority. P. 466.
6. Where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. P. 466.
7. This principle is essential to the maintenance of our constitutional system. *Id.*
8. In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases. P. 467.
9. The question whether the labor practices of an employer are practices "affecting commerce," as defined by § 2 (6) of the National Labor Relations Act, can not be answered by mere reference to the percentage of the product sold in interstate and foreign commerce. The question that must be faced under the Act upon particular facts 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 constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes. P. 467. 91 F. 2d 790, affirmed.

CERTIORARI, 302 U. S. 680, to review the affirmance of a judgment affirming in part an order of the National Labor Relations Board.

Mr. J. Paul St. Sure for petitioner.

Where there has been no antecedent movement of the raw products in commerce, the business of canning, labeling, packing, storing and loading of fruit and vegetables produced wholly in California is not "in commerce." A labor dispute therein cannot burden or obstruct a commerce which has not begun. Therefore the National Labor Relations Act does not apply and the Board had no jurisdiction. *Carter* v. *Carter Coal Co.,* 298 U. S. 238; *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495; *Veazie* v. *Moor,* 14 How. 568; *Coe* v. *Errol,* 116 U. S. 517; *Kidd* v. *Pearson,* 128 U. S. 1; *Chassaniol* v. *Greenwood,* 291 U. S. 584; *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245; *Oliver Mining Co.* v. *Lord,* 262 U. S. 172; *Utah Power & Light Co.* v. *Pfost,* 286 U. S. 165; *Lehigh Valley R. Co.* v. *Pennsylvania,* 145 U. S. 192.

Where small quantities of a raw product are shipped into the State for canning and sale to local trade in California, the National Labor Relations Act does not apply for the reason that commerce in such product has ended, and the canning and subsequent handling are local affairs; and labor disputes in such affairs do not directly burden or obstruct commerce. *Schechter Poultry Corp.* v. *United States, supra; East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465; *Public Utilities Comm'n* v. *Landon,* 249 U. S. 236; *Atlantic Coast Line* v. *Standard*

Oil Co., 275 U. S. 257; *Industrial Assn. of San Francisco* v. *United States*, 268 U. S. 64.

Unless this Court is willing to go so far as to say that the power of Congress extends over all labor disputes involving production industries, the Board did not have jurisdiction in this case, for the reason that the constitutional power of Congress cannot be made to depend on the intention of the producer to sell its product in interstate or foreign commerce, or the fortuitous circumstance that he may ultimately sell a part of such product outside the State wherein it is produced. *Kidd* v. *Pearson*, 128 U. S. 1; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210; *Federal Compress & W. Co.* v. *McLean*, 291 U. S. 17; *Oliver Mining Co.* v. *Lord, supra; Chassaniol* v. *Greenwood, supra; Heisler* v. *Thomas Colliery Co., supra; Arkadelphia Milling Co.* v. *St. Louis S. W. R. Co.*, 249 U. S. 134; *Carter* v. *Carter Coal Co., supra.*

The designation of petitioner's produce as "hot cargo" by the International Longshoremen's Association and the refusal of such association to handle such product was an unlawful conspiracy in violation of the Federal Anti-Trust Act and a violation of the Sloss Arbitration Award; and any burden or obstruction to commerce resulting therefrom is indirect and remote and does not extend the power of Congress or the jurisdiction of the Board over petitioner's production business. *Bedford Cut Stone Co.* v. *Journeymen S. C. Assn.*, 274 U. S. 37; *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Lowe* v. *Lawlor*, 208 U. S. 274; *Anderson* v. *Ship Owners Assn.*, 272 U. S. 359; *Local 167 I. B. T.* v. *United States*, 291 U. S. 293.

The instant case is not in any respect comparable to the cases wherein this Court had held that by reason of the

effects or burdens on interstate commerce the power of Congress extends to the regulation of intrastate affairs.

Rate Cases: *Houston E. & W. T. R. Co.* v. *United States,* 234 U. S. 342; *Florida* v. *United States,* 282 U. S. 194; *Railroad Commission* v. *Chicago, B. & Q. R. Co.,* 257 U. S. 563.

Board of Trade and Stockyards Cases: *Board of Trade* v. *Olsen,* 262 U. S. 1; *Hill* v. *Wallace,* 259 U. S. 44; *Swift & Co.* v. *United States,* 196 U. S. 375; *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420.

Railway Appliance, Employers' Liability, and Railway Labor Cases: *Southern R. Co.* v. *United States,* 222 U. S. 20; *Baltimore & O. R. Co.* v. *Interstate Commerce Comm'n,* 221 U. S. 612; *Mondou* v. *New York, N. H. & H. R. Co.,* (Second Employers' Liability Cases), 223 U. S. 1; *Texas & N. O. R. Co.* v. *Brotherhood of R. & S. S. Clerks,* 281 U. S. 548; *Virginian R. Co.* v. *System Federation No. 40,* 300 U. S. 515.

Anti-Trust Cases: *Standard Oil Co.* v. *United States,* 221 U. S. 1; *United States* v. *American Tobacco Co.,* 221 U. S. 106; *Addyston Pipe & Steel Co.* v. *United States,* 175 U. S. 211.

Mr. Charles Fahy, with whom *Solicitor General Reed, Assistant Solicitor General Bell,* and *Messrs. Robert L. Stern, Robert B. Watts, Laurence A. Knapp* and *Philip Levy* were on the brief, for respondent.

Petitioner is engaged in canning, packing, and shipping fruit and vegetables in Oakland, California. It is the fourth or fifth in size of such canneries in that State, which is the center of the canning industry in the United States; and annually ships large quantities of its products in interstate and foreign commerce. Stoppage of operations as a result of industrial strife in petitioner's plant would directly obstruct the movement of those

commodities in interstate and foreign commerce. There thus exists a "close and intimate" relation between petitioner's operations and the flow of commerce; and the National Labor Relations Act accordingly may validly be applied to petitioner's plant. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41.

1. This conclusion is not affected by the fact that the products processed by petitioner are grown in California. In the *Jones & Laughlin* case the Court expressly stated that its decision did not turn on the conception that the manufacturing process was carried on in a "stream" or "flow" of commerce, wherein the raw materials arriving from without the State came to rest temporarily at the plant and later went forward again in interstate commerce (301 U. S. at 36). The contention that the stream of commerce had been broken, the Court held was not relevant to the issue involved (301 U. S. at 41). The determinative factor was the obstructing effect of industrial strife upon the interstate movement of goods.

Carter v. *Carter Coal Co.*, 298 U. S. 238, does not support petitioner's contention. The *Carter* decision did not purport to rest on the difference between mining operations and manufacturing enterprises which utilize raw materials obtained through the channels of interstate commerce. Nor did this Court in the *Jones & Laughlin* case, in holding that the *Carter* case was not controlling, suggest that it was to be distinguished upon such a ground. The danger of an obstruction to interstate commerce, and the appropriateness of the means adopted by the Congress to remove it, were the decisive factors in each decision.

The *Jones & Laughlin* decision establishes that the Congress has power to prevent the obstruction to interstate commerce caused by the unfair labor practices condemned in the present Act. Neither the fact nor the degree of obstruction to commerce in manufactured prod-

ucts can in reason depend upon the place of origin of the raw materials. As this Court stated in the *Jones & Laughlin* case, Congressional authority over interstate commerce extends to the protection of such commerce "no matter what the source of the dangers which threaten it" (301 U. S. at 36–37). No distinction can properly be drawn between activities which obstruct interstate commerce in raw materials, in manufactured products, or both.

The geographic fact of concentration of natural resources in particular regions, far from lessening national concern in the industries immediately dependent upon those resources, heightens it. It does so none the less because of the natural, if not necessary, circumstance of the location of such industries at the point of concentration of the resources. The view which petitioner urges would frustrate one of the great purposes of the commerce power as realized in this statute, by removing from the reach of Congressional protection industries whose operations in interstate and foreign commerce are of vital importance to the national welfare and whose interruption or cessation by industrial strife would create problems of the deepest national concern.

2. Approximately 37 per cent. of the product of petitioner's plant is shipped in interstate or foreign commerce. The same employees prepare and ship both the goods which go to points outside California and those which do not. No separation of the employees into those working on goods destined for interstate shipment and those working on goods to be consumed in California is possible. Congress has power to regulate both interstate and intrastate activities when they are inseparably intermingled in this way. *Shreveport Case,* 234 U. S. 342. The suggestion that the power of Congress over such intermingled transactions disappears if more than 50 per cent. of the transactions are intrastate would establish an arbitrary and impractical rule of thumb in violation of the funda-

mental principle of the supremacy of federal power. A review of the decisions in which this Court has sustained federal regulation of intrastate activities because of their deleterious effects upon commerce demonstrates that the validity of such legislation has never turned upon whether the interstate commerce affected was greater in quantity than the intrastate transactions which were necessarily subjected also to the regulation imposed. Clearly, protection to interstate commerce need not be withheld because in affording that protection intrastate commerce is also safeguarded.

By leave of Court, *Messrs. H. W. O'Melveny, Walter K. Tuller,* and *Louis W. Myers* filed a brief as *amici curiae,* supporting petitioner.

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

The National Labor Relations Board on April 2, 1936, after hearing, found that petitioner, Santa Cruz Fruit Packing Company, a California corporation, had been engaged in unfair labor practices affecting commerce within the meaning of § 8, subdivisions (1) and (3) and § 2, subdivisions (6) and (7) of the National Labor Relations Act, and ordered petitioner to desist from such practices, to reinstate with back pay certain employees who had been discharged, and to post appropriate notices. 1 N. L. R. B. 454. Upon petition of the Board, the Circuit Court of Appeals affirmed the order so far as it related to petitioner's employees at its Oakland plant. 91 F. (2d) 790. In view of the importance of the question with respect to the application of the National Labor Relations Act, this Court granted certiorari.

There is no dispute as to the pertinent facts. The findings of the Board, supported by evidence, show the following:

Petitioner is engaged at its plant at Oakland in canning, packing and shipping fruit and vegetables, the bulk of

which are grown in that State. During the "peak" season, petitioner employs from 1200 to 1500 persons of whom about 30 are warehousemen. The total "pack" in the year 1935 amounted to about 1,699,270 cases. Of this amount about 37 per cent. were shipped in interstate or foreign commerce, 9.02 per cent. being sent to foreign countries and approximately 473,620 cases, or about 27.89 per cent. to various points in the United States outside California. The sales to purchasers outside the State were under either f. o. b. or c. i. f. San Francisco Bay Point contracts.

The methods of transportation are by water, rail and truck. Export shipments go by water and this is also the chief sort of carriage to points within the United States outside California, about 20 per cent. being shipped by rail and an undetermined amount by truck directly to the point of destination. "There is a constant stream of loading and shipping of products" out of petitioner's plants throughout the entire year. From 3,000 to 4,000 cases are loaded daily in the various vehicles of conveyance. That loading is a substantial and regular part of the work of the warehousemen in petitioner's employ. When the shipments are by rail or overland trucks, these employees load directly into the equipment of the principal carriers. When shipments are by boat, the warehousemen load the cases into the trucks which carry the goods to the docks.

Weighers, Warehousemen and Cereal Workers Local 38–44, International Longshoremen's Association, is a labor organization affiliated with the American Federation of Labor. Its efforts to organize the Oakland plant were begun in July, 1935, and many of the permanent warehousemen made application for membership. When this came to the attention of petitioner early in August, the General Manager announced that he would not permit a union in the plant because of competitive conditions. On their return from a union meeting at which the men

were to be initiated, members of the night shift were prevented from entering the plant and the next morning the members of the day crew were similarly excluded. A picket line then formed, on the morning of August 8th, was maintained until September 27th with such effectiveness that eventually the movement of trucks from warehouses to wharves ceased entirely. The Board found: "The teamsters refused to haul Santa Cruz merchandise; the warehousemen at the dock warehouses who ordinarily unload the canned goods from the cars prior to their reloading into the ships, since they were members of the same union as the Santa Cruz warehousemen, also declined to handle Santa Cruz cargo. As members of the sister union, I. L. A. 38–79, the stevedores who move the goods from dock to ship also refused to move Santa Cruz cargo both at the East Bay and San Francisco docks during the entire period that the picket line was maintained. Other unions whose members refused to move 'hot' Santa Cruz cargo were those members of the Sailors who comprised the crews of steam schooners and whose duties include the handling of cargo." Petitioner points out that the refusal of the other unions to handle petitioner's goods was a violation of an arbitration award made in October, 1934, following the San Francisco maritime strike of that year.

The Board found that interference with the activities of employees in forming or joining labor organizations results in strikes and industrial unrest which habitually have had the effect in the canning industry of impeding the movement of canned products in interstate and foreign commerce. Reference was made to official statistics of the United States Department of Labor in relation to the canning and preserving industries from which it appeared that of the fifteen strikes and lockouts in 1934, and the first six months of 1935, eight were the outcome of difficulties in regard to union recognition and discrimi-

nation for union activities, 7,484 workers being involved in those stoppages.

The Board concluded that the discharge of the employees named and the refusal to reinstate them constituted an unlawful discrimination under the National Labor Relations Act and that the acts of petitioner had led and tended to lead to labor disputes burdening and obstructing commerce.

Petitioner contends that the manufacturing and processing in which petitioner is engaged are local activities and that the Board was without jurisdiction over the labor dispute involved in this case.

First. There is no question that petitioner was directly and largely engaged in interstate and foreign commerce. We have often decided that 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 for transportation. See *Savage* v. *Jones,* 225 U. S. 501, 520; *Texas & N. O. R. Co.* v. *Sabine Tram Co.,* 227 U. S. 111, 114, 122; *Pennsylvania R. Co.* v. *Clark Bros. Coal Mining Co.,* 238 U. S. 456, 465–468. A large part of the interstate commerce of the country is conducted upon that basis and the arrangements that are made between 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, do not affect either the power of Congress or the jurisdiction of the agencies which Congress has established. *Pennsylvania R. Co.* v. *Clark Bros. Coal Mining Co., supra.*

Second. The power of Congress extends not only to the making of rules governing sales of petitioner's products in interstate commerce, as, for example, with respect to misbranding under the Federal Food and Drugs Act (21 U. S. C., §§ 1 to 26), or with respect to forbidden dis-

criminations in prices under the Clayton Act (15 U. S. C. 13), but also to the protection of that interstate commerce from burdens, obstructions and interruptions, whatever may be their source. *Second Employers' Liability Cases,* 223 U. S. 1, 51. 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 that industry when separately viewed is local. It is upon this well-established principle that the constitutional validity of the National Labor Relations Act has been sustained. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 38.

Petitioner urges that the principle is inapplicable here as the fruits and vegetables which petitioner prepares for shipment are grown in California and petitioner's operations are confined to that State. It is not a case where the raw materials of production are brought into the State of manufacture and the manufactured product is handled by the manufacturer in other States. In view of the interstate commerce actually carried on by petitioner, the conclusion sought to be drawn from this distinction is without merit. The existence of a continuous flow of interstate commerce through the State may indeed readily show the intimate relation of particular transactions to that commerce. *Stafford* v. *Wallace,* 258 U. S. 495, 516; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 33. But, as we said in the *Jones & Laughlin* case, the instances in which the metaphor of a "stream of commerce" has been used are but particular, and not exclusive, illustrations of the protective power which Congress may exercise. "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 actions springing from other sources." *Id.,* p. 36.

Such injurious action burdening and obstructing interstate trade in manufactured articles may spring from labor disputes irrespective of the origin of the materials used in the manufacturing process. And the place where the manufacturer makes his sales is not controlling if the sales in fact are in interstate commerce. A few illustrations, from our many decisions, will suffice. In *Loewe* v. *Lawlor* [1908], 208 U. S. 274, 302, 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 the interstate trade in the manufactured hats. In *United Mine Workers* v. *Coronado Co.* [1922], 259 U. S. 344, 407, 408, the Court said that "Coal mining is not interstate commerce and the power of Congress does not extend to its regulation as such," but 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." And in the second *Coronado* case [1925], 268 U. S. 295, 310, the Court held that the evidence was adequate to show that the purpose was to stop the production of non-union coal and prevent its shipment to markets of other States, and that a combination to that end would constitute a direct violation of the Anti-Trust Act. Another illustration is found in *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assn.* [1927], 274 U. S. 37, 48, where a conspiracy of stone cutters was held to have "the immediate purpose and necessary effect of restraining future sales and shipments in interstate commerce" of the building stone which was quarried at petitioner's plants.

With respect to the federal power to protect interstate commerce in the commodities produced, there is obviously no difference between coal mined, or stone quarried, and fruit and vegetables grown. The same principle must apply, and has been applied, to injurious restraints of

interstate trade which are caused by the practices of manufacturers and processors. *Standard Oil Co.* v. *United States,* 221 U. S. 1; *United States* v. *American Tobacco Co.,* 221 U. S. 106. The case of *Carter* v. *Carter Coal Co.,* 298 U. S. 238, did not establish a different principle or overrule the decisions which we have cited. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra,* p. 41. Nor are the cases in point which are cited by petitioner with respect to the exercise of the power of the State to tax goods, which have not begun to move in interstate commerce or have come to rest within the State, or to adopt police measures as to local matters. In that class of cases the question is not with respect to the extent of the power of Congress to protect 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 that paramount authority. *Bacon* v. *Illinois,* 227 U. S. 504, 516; *Stafford* v. *Wallace, supra,* p. 526; *Minnesota* v. *Blasius,* 290 U. S. 1, 8.

Third. It is also clear that where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a close and substantial relation to interstate commerce in order to justify the federal intervention for its protection. However difficult in application, this principle is essential to the maintenance of our constitutional system. The subject of federal power is still "commerce," and not all commerce but commerce with foreign nations and among the several States. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains. *Schechter Corporation* v. *United States,* 295 U. S. 495, 546. "Activities local in their immediacy do not become interstate and national because of distant repercussions." *Id.,* p. 554.

To express this essential distinction, "direct" has been contrasted with "indirect," and what is "remote" or "dis-

tant" with what is "close and substantial." Whatever terminology is used, the criterion is necessarily one of degree and must be so defined. This does not satisfy those who seek for mathematical or rigid formulas. But such formulas are not provided by the great concepts of the Constitution such as "interstate commerce," "due process," "equal protection." In maintaining the balance of the constitutional grants and limitations, it is inevitable that we should define their applications in the gradual process of inclusion and exclusion.

There is thus no point in the instant case in a demand for the drawing of a mathematical line. And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases. The critical words of the provision of the National Labor Relations Act in dealing with the described labor practices are "affecting commerce," as defined. § 2 (6). It is plain that the provision cannot be applied by a mere reference to percentages and the fact that petitioner's sales in interstate and foreign commerce amounted to 37 per cent., and not to more than 50 per cent., of its production cannot be deemed controlling. The question that must be faced under the Act upon particular facts 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 constitutionally be made the subject of federal cognizance through provisions looking to the peaceable adjustment of labor disputes.

The question of degree 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(4). *The Shreveport Case,* 234 U. S. 342, 351. It is met under the Federal Employers' 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 & N. W. Ry. Co.* v. *Bolle,* 284 U. S. 74, 78, 79; *New York, N. H. & H. R. Co.* v. *Bezue,* 284 U. S. 415, 420. 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." 15 U. S. C., 13, 14. *Standard Fashion Co.* v. *Magrane-Houston Co.,* 258 U. S. 346, 356, 357; *Federal Trade Comm'n* v. *Raladam Co.,* 283 U. S. 643, 647, 648.

Such questions cannot be escaped by the adoption of any artificial rule.

Fourth. The direct relation of the labor practices and the resulting labor dispute in the instant case to interstate commerce and the injurious effect upon that commerce are fully established. The warehousemen in question were employed by petitioner in loading its goods either into the cars of carriers or into the trucks which transported the goods to the docks for shipment abroad or to other States. The immediacy of the effect of the forbidden discrimination against these warehousemen is strikingly shown by the findings of the Board. When the men found themselves locked out because of their joining the union, they at once formed a picket line and this was maintained with such effectiveness that eventually "the movement of trucks from warehouse to wharves ceased entirely." The teamsters refused to haul, the warehousemen at the dock warehouses declined to handle, and the stevedores between dock and ship refused to load, petitioner's goods. These became, in the parlance of the men, "hot" cargo. Petitioner says that this was an unlawful conspiracy of those sympathizing with its discharged warehousemen, but it was the discrimination against them which led directly to the interference

with the movement from the plant and elicited the support so effectively given.

It would be difficult to find a case in which unfair labor practices had a more direct effect upon interstate and foreign commerce.

The relief afforded by the Board, in requiring petitioner to desist from the unfair labor practices condemned by the Act and to reinstate the discharged employees with back pay, was properly sustained by the Circuit Court of Appeals, and its order is affirmed.

Affirmed.

MR. JUSTICE CARDOZO and MR. JUSTICE REED took no part in the consideration and decision of this case.

MR. JUSTICE BUTLER, dissenting.

Carter v. *Carter Coal Co.*, 298 U. S. 238, decided that Congress lacks power to regulate terms and conditions of employment of those engaged in local production of commodities sold and about to be shipped in interstate commerce. The circuit court of appeals found two questions for solution. One was whether upon that point the *Carter* case, in 1936, has been overruled by our decision in 1937 in *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1. The second was whether the power extends to cases where only 39% of goods locally produced are shipped in interstate commerce. The court, one judge dissenting, upheld the order. Each of the judges wrote an opinion; two held this Court has overruled the *Carter* case.

If the decision of the *Carter* case upon the point stated stands, the Board's order cannot be upheld. The lower court made its decision depend upon that question. Save authoritatively to decide it here, there was no reason for granting the writ. But the opinion just announced does not refer to the question.

In the *Jones & Laughlin* and companion cases, four dissenting Justices thought the Court then departed from well-established principles followed in the *Carter* case and quoted (p. 96) a passage from it expounding what it meant by "direct" effect on interstate commerce as distinguished from what is "indirect." And the dissenting opinion insisted (p. 97) that, under the *Carter* decision, the facts in those cases did not disclose any direct effect upon interstate commerce, and said: "A more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine."

But the dissent failed to elicit from the Court any statement as to whether it meant to overrule the *Carter* case. The opinion does not discuss that case. It does, however, contain the following (p. 41): "In the *Carter* case . . . 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 [meaning the *Schechter* and *Carter*] cases are not controlling here." The later decisions of this Court involving the power of Congress to deal with labor relations in local production do not refer to the *Carter* case. At least until this Court definitely overrules that decision, it should be followed.

Upon the authority of that case, I would reverse the order of the circuit court of appeals on the ground that, as applied here, the Act is unconstitutional.

MR. JUSTICE MCREYNOLDS concurs in this opinion.