

Supreme Court--Organized Labor vs. Capital

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David Lawrence, daily Washington politico-critic, wrote a special newspaper syndicate article analyzing the Gold Clause cases. At one point in it he drew emphatic attention to the previous political connections of the Justices writing the opinions. Here was Chief Justice Hughes, he said, a former Republican candidate for President, writing the forceful opinion which largely upheld the action of A Democratic Congress and a Democratic administration. On the other hand here was Justice McReynolds, a former Democratic Attorney-General, writing the vigorous dissent which thoroughly condemned and invalidated their action. This arrangement, he thought, would certainly silence those who often charged that previous political connections influenced the decisions of Supreme Court justices.

Such may all be so. No doubt judges do not allow their former partisanship to play a part in their judgments. But having dismissed the factor of actual party membership what about other factors to which Mr. Lawrence makes no reference in his article? What, for example, as to fundamental divergences in economic philosophy? It would seem that this factor was and is of great importance in many constitutional judgments. For in the Gold cases as in the recent Minnesota Moratorium and New York Milk Control Act decisions, all must agree that deeply imbedded classical economic views intertwining through the dissenting justices' interpretation of the Constitution carried the minority to their result. Likewise all must agree that it was the majority's understanding of modern economic thought and surrounding economic conditions which guided the affirming five to uphold these laws.

This introduces the premise which this research will undertake to affirm or deny. Such a conclusion as to the effect of the justices' economic philosophy on the results of these three famous contemporary decisions suggests a generalization. It seems to expand into the contention that in these fields of the law involving large scale human relationships and the clash of

property interests the course of decisions is determined not so much by precedent and principle as by implicit social prejudices, economic sets of mind, and environmental impressions which are woven into the mental fabric of our judges.

With this premise set up as the basis for study a particular line of cases has been selected to test out its validity. That line of decisions will be the entire group of Federal Supreme Court cases involving the issue of Organized Labor versus Capital. The Supreme Court was decided upon as the appropriate forum because of the relatively few, yet tremendously important character of the labor cases decided before it; and because the members of this court of all courts should be most free from any outside factors and influences. As to why this particular line of cases, a longer explanation is necessary. The choice is bound up with a second premise: that Capital and Labor have an irreconcilable conflict of economic interest. No collection of facts will be adduced to support this second premise. For final judgment as to its truth or falsity is not the subject of this research. But since the traditional view denies the existence of any conflict a brief statement of the steps taken in arriving at this premise should be pointed out.

There are two fundamental drives which motivate our present American economy. Capital is driving for larger profits, higher salaries and bonuses. And Labor is driving for higher wages, more security against unemployment, old age, sickness, and an all-around better standard of living. The money to satisfy both must come from the same common fund. Who obtains the larger per capita share of this fund? Capital does. Why? Because Capital by owning and controlling the means of production dictates on what terms it will buy the labor of the workingman. He either works for Capital or he starves. This is but another way of saying that Capital will determine what part of the common fund it will give labor. Thus the existence of the conflict becomes apparent. However, unless there is a scarcity in the labor market, the individual laboring man has no lever to use in his efforts to obtain the higher wages he constantly wants. And so we see that wherever employes have not organized into bona fide labor organizations relations between employers and employes remain exactly as Capital dictates. And there thus appears to be no conflict. But where Labor has formed actual collective organization it has imple-

mented itself with economic pressure and thus gained a real force to aid in its drive for a larger distribution of the common fund. Here then we find constant evidences of the conflict.

Once one recognizes this basic divergence he is not confused by generous signs (recreation fields, Christmas bonuses, employe club rooms, annual picnics) which appear to give the lie to the actuality of the conflict. For he sees them as intelligent benevolences whose chief purpose is to keep employees contented and satisfied. Nor does he accept the view that the wide-spread ownership of stock, savings bank deposits and Building and Loan certificates proves clearly that there are no class lines. For he realizes that this diversification of the partial ownership of capital effectively screens the conflict but does not eliminate it. It is true that the small contributions of thousands upon thousands through the purchase of stock, insurance, and certificates have aided considerably in furnishing capital to develop our industries. But in a practical sense he knows these small holders are not the owners of industry. Berle and Means in their recent book, "The Modern Corporation," have definitely exploded this long-believed theory of the supposed wide diversification of our industrial ownership. One who understands this, cuts through this screen and sees that in spite of it there are still two classes in America. On one side are those whose chief means of income is derived from their ownership of stocks, bonds, their receipt of rents, unearned increment, bonuses, and excessive salaries as managers and high executives of industry. On the other side are those whose chief income comes from their small salaries and wages as employes.

Convinced that this conflict exists and realizing that it goes right to the heart of our whole national economy I felt that this would offer an excellent field to measure the extent to which judges are influenced by factors outside the law books. For the question actually posed for decision was simple and direct. Who should be favored—the owning class or the working class—Capital or Labor? Biographical research told me little as to the specific forces that had produced these men who were to answer that question. But it did tell me that with but one or two exceptions they all came from the upper strata of American life. Family, position of wealth, degree of education, other background, all indicated they were to be identified with the owning class.

Then I turned to the cases. After I had analyzed each of them I found that four must be ruled from my tabulation in order to keep my results accurate. For these four so decidedly involved some different principle of constitutional law that they could not be employed in my study. Thus I excluded from my summaries the first Coronado Coal Co. case (11), National Association of Window Glass Manufacturers case (13), and the Industrial Association case (15) which were held by united courts to concern questions entirely apart from interstate commerce. I also excluded the Pennsylvania R. R. cases (12) which concerned statutory construction alone. Only one interpretation was possible. The Railroad Labor Board had no power to enforce its decision. But since the judicial votes on these cases were 18 for Capital and 18 for Labor, inclusion would not have varied the ultimate conclusion to be drawn from the figures.

The material has been arranged in three divisions. First will come a comprehensive chart with complete tabulation of the judges and their votes on each case. Next a few pages of observations and finally an Appendix—Digest of the Cases.

Twenty-two justices considered twenty cases. Sixteen cases squarely raised the issue. Should Capital or Labor be favored? Ninety-one judicial votes were cast for the former as against 37 for the latter. And this wide disparity becomes even more emphatic with the analysis of the labor tallies. Holmes contributed 9, Brandeis 7, and Clarke 5, for a total of 21 out of the 37. Three justices out of twenty-two supply about three-fifths of the labor vote. Further a case by case comparison of the records of Holmes, Brandeis and Clarke with McKenna, Vandevanter, and McReynolds bring out most clearly the great divergence of approach and opinion. Such divergence seemingly is not the result of accident or chance. It can only be explained in terms of differing social and economic outlook.

I previously noted the background of these justices to be that of the owning classes. The results would strongly suggest that the set of mind which normally could be expected to be the product of such background was carried over into their decisions. Typical analyses of the position taken by those justices favoring Capital offer good ground for such a conclusion. One approach goes like this. Has the business of the plaintiffs been damaged by the activities of the defendants? Yes it has. Is the

ORGANIZED LABOR VS. CAPITAL

	1 Debs	2 Adair	3 1st Danbury 2nd	4 Buck Stove	5 Coppage	6 Paine	7 Hitchman
Melville Fuller	C	C	C				
John Harlan	C	C	C	C			
David Brewer	C	C	C				
Edward White	C	G	C	C	C	L	C
Rufus Peckham		C	C				
William Day		C	C	C	L	L	C
William Moody			C	C			
Joseph McKenna		L	C	C	C	C	C
Oliver W. Holmes		L	C	C	L	L	L
Horace Lurton				C			
Charles E. Hughes			C		L		
Joseph Lamar			C	C	C		
Willis Van Devanter			C	C	C	C	C
Mahlon Pitney			C		C	C	C
James McReynolds			C		C	C	C
Louis Brandies						L	L
John Clarke						L	L
William H. Taft							
George Sutherland							
Edward Sanford							
Pierce Butler							
Harlan Stone							

C—Capital
L—Labor

*—Cases whose tallies are not included in tabulation.
Cc—Capital-concurrence

IN THE SUPREME COURT

8 Duplex	9 Tri-City	10 Truax	11 ^{1st*} Coronado 2nd	12 Penn R.R.*	13 Window Glass*	14 United Leather	15 Industrial Corp*	16 Journeyment's Stone	17 Railway Clerks	Capital	Labor	
										3		
										4		
										3		
C										8	1	
										2		
C	C	C	L	C						8	2	
										2		
C	C	C	L	C	C	L	C	C		11	1	
L	C	L	L	C	C	L	L	C	L	5	9	
										1		
									L	1	2	
										3		
C	C	C	L	C	C	L	C	C	C	L	11	1
C	C	L	L	C						6	1	
C	C	C	L	C	C	L	L	C	C	9	1	
L	C	L	L	C	C	L	L	C	L	2	7	
L	L	L	L	C						0	5	
	C	C	L	C	C	L	L	C	C	4	1	
				C		L	L	C	C	L	2	2
				C		L	L	C	C	L	2	2
				C		L	C	C	C	L	3	1
								C	L	1	1	
TOTALS										91	37	

business in any possible way tied up with interstate commerce? It is. Ergo, the defendants are maliciously conspiring in restraint of trade and subject to the Sherman Anti-trust Law for such conspiracy. Hardly a word ever appears as to the objectives of the defendants' action and a suggested justification for their acts. The other approach goes like this: The right of a man to carry on his business is a property right. Part of this property includes the right to hire and fire without interference. For his right of freedom of contract must be held inviolate. Therefore any legislation which attempts to make it criminal to fire a man for union activity or to restrict an employer in his use of the Injunction to protect his business is unconstitutional as violating either the 5th or the 14th Amendment. Remembering the background of the judges the overwhelming majority in support of Capital is not in the least odd. The strange thing is that a few of these twenty-two had sufficient open mindedness and understanding of Labor's viewpoint to run upstream against the general flow of pro-Capital sentiment.

So far this summary has dealt only with two categories. Pro-capital or Pro-labor. But as in all other categorical attempts there is always a twilight zone between the different classifications. Here this is evidenced by the united court of 1929 upholding the Railway Clerks injunction against the interference of the Texas and N. O. R. Co. with their collective bargaining organization. This case sustained Labor on a point comparable to that in the Adair case. This change in sentiment after the passage of twenty years resulted from approaching the problem not from the employer's standpoint—freedom of contract and the unfettered right to lay down conditions of employment, but from the recognized right of employes to organize, followed by its corollary that such right must be protected by imposing the correlative duty of non-interference and non-coercion on the employer.

The impossibility of watertightness is also seen in the Labor records of Justices McKenna, Day, Pitney, Holmes, Brandeis and Hughes.

Justice McKenna handed down a very liberal dissent in the Adair case bringing out quite forceably that the statute there involved was to avoid the recurrence of the general railroad strike of 1894—and therefore should be upheld. But after that case he became an uncompromising supporter of Capital right straight through to his retirement.

Justice Day jumped out of his usual pro-Capital approach to support Labor in his Coppage dissent and the Paine majority. The Coppage dissent was the result of a conflicting loyalty that states should be allowed to reasonably exercise their police power without the fourteenth amendment being allowed to strike such legislation down. The Paine case is not definitely explainable.

Justice Pitney broke from an intensely partisan line of opinions in favor of Capital to dissent in the Truax case. But he does it on the same ground as Day in the Coppage case.

Justice Holmes' Supreme Court opinions have always upheld collective bargaining. They have also affirmed the right of Congress and state legislatures to make collective bargaining more than an empty phrase—to protect it from annihilating interference by Capital.

Apart from the right of collective bargaining there is a conflict in his views. There is a noticeable change in his viewpoint as to the legality of boycott and sympathetic strikes. In 1914 he wrote the Court's opinion in the second Danbury Hatters case upholding the awarding of treble damages against the Union for illegal conspiracy in restraint of interstate trade. But with the coming of the Clayton Act we see him lining up with Brandeis and Clarke in exempting Labor from the devastating curtailment of action brought about by a continued application of the Anti-trust act. If Congress gave bread he refused to turn it to stone.

But beyond this Holmes is unwilling to go. Affirmation of the hard ugly realities of Labor tactics was not part of his credo. We see this aversion to mass picketing, violent language and threats, in his participation in the majority of the Tri-City Trades case and Coronado second.

Justice Brandeis has brought to the Court a most sympathetic understanding and appreciation of Labor's struggle. His dissents in the Hitchman, Duplex, Truax, and Stonecutters cases show judicial forthrightness and judicial realism at its best. One could limit his Labor readings to these four opinions and be still well posted on the true Labor viewpoint. But even Justice Brandeis shrinks from the brutality that has been an unfortunate part of mass economic pressure as witness his concurrence in the Tri-City Trades case.

Chief Justice Hughes has participated in three Labor deci-

sions. He dissented from the Coppage majority but the same year supported the treble damages award in Danbury Hatters second. His only pronouncement since his return to the Court was his excellent realistic united Court opinion in the Railway Clerks case.

We have called these exceptions the twilight zone. The admission that such an area exists and the enumeration of the justices belonging in it do not detract from the implications of the totals mentioned earlier. Rather they merely add realism to a picture that might otherwise seem to precise and classified. It softens the attempt to absolutely straight jacket each of these justices into one view or the other. But it does not divert the incontrovertible trend of these cases.

The purpose of this study is to test a premise through the consideration of one particular line of cases—Organized Labor vs. Capital. The ratio of over 2 to 1 in favor of Capital and the significance of about three-fifths of the Labor vote coming from three judges noted for their fairness and impartiality slants directly towards the validity of that premise as here tested. And so until more facts are brought to light or a different analysis of these cases from that made here is produced, it can be assumed that in these fields of the law involving large scale human relationships and the clash of property interest, the course of decisions is determined not so much by precedent and principle as by implicit social prejudices, economic sets of mind, and environmental impressions which are woven into the mental fabric of our judges.

(1) *In re Debs* (1894). Government had obtained an injunction against the American Railwaymen's Union to prevent obstruction of interstate commerce and interference with the passage of the mails. Debs violated this and was jailed for contempt.

Court's Opinion by Brewer. The Court denied appeal from the refusal of court below to grant habeas corpus. The petitioners counsel had drawn the Court's attention to the heroic spirit of self sacrifice of these men who gave up their jobs not in defense of their own rights but in sympathy for those whom they though had been wronged. The Court turned this aside with the reminder that the means of redress of all wrongs is through the court and at the ballot box and that no wrong, real or fancied carries with it legal warrant to invite as means of redress the cooperation of a mob with its accompanying acts of violence.

(2) *Adair vs. United States* (1907). Congress passed an act making it criminal for a carrier engaged in interstate commerce or agent thereof to discharge

an employee simply because of his membership in a labor organization. Party indicted and convicted raises question of constitutionality.

Court's Opinion by Harlan. The Court without considering the reasons behind the act determined that it was a clear invasion of the liberty of contract guaranteed by the Fifth Amendment and that there was no relation between the act and the power of Congress over interstate commerce. The Court said that the right of the employee to sell labor upon such terms as he deems proper is in its essence the same right as the right of purchaser of labor to prescribe conditions upon which he will accept such labor from person offering to sell it.

McKenna (dissent). McKenna felt that the liberty of contract was not absolute and was properly qualified here by Congress in its effort to prevent any future obstructions to interstate commerce such as the Pullman Car Strike produced. To prevent discharge for union affiliation seemed a reasonable means to prevent such future interference.

Holmes (dissent). Holmes believed that the Fifth Amendment had already been stretched too far in its protection of the freedom of contract. It could and should be here qualified.

(3) *Danbury Hatters Cases.* *Loewe v. Lawlor (1907)* and *Lawlor v. Loewe (1914)*.

The first case arose on demurrer to action for treble damages under Sherman Anti-trust act. It was claimed that the nationwide boycott of the goods of plaintiff by defendants and the publication of plaintiff's name on various unfair lists resulting in reduced purchases of plaintiff's product was conspiracy in restraint of interstate trade.

The second case was error from judgment of treble damages in the Federal court below.

Court's Opinions by Fuller and Holmes. This was an unlawful combination which was aimed at and produced burden on the plaintiff's interstate liberty to trade and the free flow of commerce.

(4) *Buck Stove and Range Co. vs. Gompers (1910)*. The defendants were jailed for contempt in violation of injunction against further publication of the plaintiff's name as unfair to organized labor. Was this jailing proper?

Court's Opinion by Lamar. Criminal contempt requires separate action of criminal nature and therefore such jailing was improper. Before arriving at this procedural result the Court found occasion to say that it was the duty of equity to protect the one who was made helpless in face of the vast accumulated power of labor bodies arising from the multitudes of members therein. Lawful to form organizations but not lawful to boycott and force into submission anyone who will not accept labor's terms.

(5) *Coppage v. Kansas (1914)*. Kansas had passed an act identical with the congressional act in the Adair case. Here however there was a different phase contested. Namely that it was unlawful to coerce, demand, or compel any persons to accept as a condition of employment that they would refrain from joining any labor organization. Coppage was indicted thereunder.

Court's Opinion by Pitney. Court decided Adair case controlled and therefore act unconstitutional. In answer to the argument that such act would place the parties to the employment contract on a more equal basis and thus

better the employes financially the court stated.—“And since it is self-evident that unless all things are held in common some persons must have more property than others it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights.”

Holmes (dissent). Workingmen not unnaturally may believe that only by belonging to unions can they secure a contract fair to them. Being reasonable belief the right to belong may be enforced by law in order to establish the equality of position in which liberty of contract begins.

Day and Hughes (dissent). It is clearly established by this Court that liberty of contract may be circumscribed in the interest of the state and the welfare of its people. This act was intended to promote the same liberty of action for the employe as the employer confessedly enjoys. They distinguished the Adair case because that was in regard to the employer's right to discharge at will.

(6) *Paine Lumber Co. v. Neal (1915)*. Certain carpenter unions had agreements with master carpenters and builders to hire only union members and use only union made goods. The plaintiffs running non-union shop lost many sales of their products and sought injunction.

Court's Opinion by Holmes. Private persons cannot gain injunction under the 1890 Anti-trust Act.

Pitney, Van Devanter, McKenna, and McReynolds (dissent). The defendants are engaged in a boycotting combination in restraint of interstate trade. Proof being clear that the conspiracy was aimed at property rights of plaintiffs and driving non-union shops out of business therefore there is power in equity to enjoin such combination apart from any absence of reference in the Sherman act.

(7) *Hitchman Coal and Coke Co. v. Mitchell (1917)*. The Coal Co. had formed contracts with men which required them to refrain from joining union as condition of employment and to cease employment if at any time they joined union. The defendants sought to organize the men regardless of their contracts and hired an agent to carry on such program. The plaintiffs seek injunction against such activity.

Court's Opinion by Pitney. The court upheld the granting of such injunction. Court said that whatever may be advantages of collective bargaining it is not bargaining at all in any sense unless it is voluntary on both sides. The same liberty which enables men to form union and through the union to enter into agreements with employes willing to agree entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union.

Brandies, Holmes, and Clarke (dissent). The end being lawful (unionization—inserted by writer) defendants' efforts to unionize the mine can be illegal only if methods or means pursued were unlawful. The dissent through additional facts and by a different slant on the facts brought out by the majority showed that the employes had not actually joined the union and until they did there was no third party contractual interference which might be

construed as actionable. Further Brandies deflated the words characteristically used in these injunctions against labor unions—coerce, intimidate, maliciously threaten. “The employer may sign the union agreement for fear that labor may not be otherwise obtainable; the workingman may sign the individual agreement for fear that employment may not be otherwise obtainable. But such fear does not imply coercion in the legal sense.”

(8) *Duplex Co. v. Deering* (1920). The plaintiff manufactured printing presses and was located in Michigan. It refused to permit unionization of its men by the Machinists International. The union attempted to enforce the same by boycott and sympathetic strike of affiliated locals working for customers of the plaintiff or doing business with plaintiff in other ways. Injunction asked for claiming conspiracy in restraint of interstate trade.

Court's Opinion by Pitney. The court grants injunction. In process of showing clear conspiracy it restricted the words of the new Clayton act which by Section 20 attempted to greatly curtail the use of injunctions. It points out that such section imposed an exceptional and extraordinary restriction upon equity courts and therefore should be given a very strict construction. As a result sympathetic strikes and secondary boycotts were declared to remain illegal conspiracies. In referring to the section exempting peaceful persuasion from injunctions it stated that the instigation of a sympathetic strike in aid of a secondary boycott cannot be deemed peaceful persuasion.

Brandies, Holmes, and Clarke (dissent). The Clayton act must be remembered to be the result of twenty years effort to remove the normal economic pressure activities of unions from the deathly blight of common law conspiracy. Judges for years had set up themselves in their chancellor robes as the supreme arbiters of trade union conduct—judges whose social and economic views constantly aided the employers in their fight against unions. Congress finally felt that it should substitute its views as to rules of conduct of the conflict for those of the federal courts. Therefore the words of this section should be construed as to exempt the present boycott from injunctions as long as such were carried on legally.

The dissent added very important facts which showed that the Duplex Co. was the only one of the four companies making printing presses which was not unionized and that these other companies had served notice that unless the Duplex Co. accepted union terms they must break their agreements.

(9) *American Steel Foundries v. Tri City Trades Council* (1921). This case raised another phase of Section 20 of the Clayton act. To what extent can the injunction still be used to enjoin picketing in light of words immunizing peaceful persuasion?

Court's Opinion by Taft. The court states that evidence showed such violence was employed as to characterize the attitude of pickets as continuously threatening. It is idle to talk of peaceful communication under such conditions. Numbers constituted intimidation. Employes had to run the gauntlet. Such picketing was unlawful. It was decided therefore to limit the strikers and their sympathizers engaged in the economic struggle to one representative for each point of ingress and egress. Clayton act was said to have no bearing because it merely declared what was previous good equity procedure.

Brandies (concur) and Clarke (dissent).

(10) *Truax v. Corrigan* (1921.) Law identical with Clayton act passed by Arizona. Plaintiff restaurant owner suffered great loss of business from peaceful boycott and strike. Attempts to obtain injunction. State courts refused. Appeal on ground of the Fourteenth Amendment.

Court's Opinion by Taft. The means of defendants were unlawful. Palpable wrongs, libellous attacks, abusive epithets, loud appeals were a nuisance to free access to plaintiff's business. Would be customers were compelled to run the gauntlet of most uncomfortable publicity and possible injurious consequences. Any state law that allows such acts is against the Fourteenth Amendment.

Further such law denies equal protection of laws. Such a classification excluding the injunction as means of defending property is said to be a worthwhile experiment. But when fundamental rights are thus attempted to be taken away we may well subject such experiment to attentive judgments. The constitution was intended, its very purpose was to prevent experimentation with the fundamental rights of the individual.

Holmes (dissent). Business may have pecuniary value and commonly is protected by law against various unjustified injuries. But you cannot give it definiteness of contour by calling it a thing. It is a course of conduct and like other conduct is subject to substantial modification.

Pitney and Clarke (dissent). The establishment or disestablishment of injunctive protection against picketing can be handled by a state without invading property. Ordinary legal remedies remain and I cannot believe that use of injunction in such cases however important, is so essential to right of acquiring, possessing, and enjoying property that its restriction or elimination amounts to a deprivation of liberty or property. Upon the facts it hardly could be said that defendants kept within bounds of peaceful picketing or boycott. But we must follow state court's pronouncement that statute prescribed new rule of evidence for determining whether picketing was lawful and under that rule the defendants actions are alright.

Brandies (dissent). "Practically every change in law governing relation of employer and employe must abridge in some respect the liberty or property of one of the parties if liberty and property be measured by the standard heretofore prevailing." Further there is equal protection of laws for few laws are of universal application. "Peculiar relationship of individuals such as the present one furnishes legal basis for classification satisfying the fourteenth."

(11) *Coronado Coal Co. Cases* (1922) and (1924). Mine attempted to run non-union in union area. Strike, shutdown, intention to open non-union. Fire and wholesale loss of property resulted from an attack alleged to be led by District 21 of the United Mine Workers. Lower courts in first case found conspiracy to interfere with interstate trade and gave treble damages under the Sherman act. In second case additional facts offered to make out the interference alleged.

Court Opinion by Taft. The Court was unable to find interference in the first case sufficient to warrant invoking the Anti-trust act. But it clearly wanted to. For it speaks of palpable damage and felonious, lawless, murderous conduct. Said that "circumstances were such as to awaken regret that in their view of the federal jurisdiction they could not affirm the Judgment.

But it is of far higher importance that the fundamental limitations in respect to federal jurisdiction be preserved inviolate."

With the added facts disclosed in the second case so as to show conspiracy to interfere with interstate commerce the court reversed the lower court's direction of verdict against District 21.

(12) *Pennsylvania R. R. v. U. S. Railroad Labor Board (1922) and (1924)*. In the 1922 case the decision of Board held to be dependent for enforcement on mere moral suasion. The 1924 decision was same in result. The cases are considered as one for tabulation.

Court Opinion by Taft. Seeking to control employes by agreements to maintain freedom from influence of independent unions, refusal to comply with Labor Board's ruling, threatening discharge to force agreement as to wages which its own picked representation had agreed to, all these things might be done and the Railroad remain within its strict legal rights.

(13) *National Association of Window Glass Manufacturers v. United States (1923)*. With Holmes writing the opinion the united court determined that an agreement between the glass workers union and the association to spread out work and guarantee labor was not contra to Anti-trust act. For it in no way affected interstate commerce.

(14) *United Leather Workers v. Herkert (1923)*. The court with Taft writing opinion refused to find that the picketing and striking as well as alleged boycott were a conspiracy which interfered with interstate commerce.

McKenna, Van Devanter and Butlet (dissent)

(15) *Industrial Association v. United States (1924)*. Unanimous court speaking through Sutherland held that there was no conspiracy in restraint of interstate commerce where San Francisco Building contractors formed Builders Exchange which would not dispense any building materials unless the builder would agree to operate non-union.

(16) *Bedford Stone Co. v. Journeymen Stone Cutters (1926)*. Plaintiff sought to enjoin national order of General Union to refrain from working on any stone produced by plaintiff. Actually the General Union in effort to reunite the plaintiffs had ordered their members over the country to not work on any stone which had been worked on by men working in opposition to the general union. Such had caused substantial loss in plaintiff's business.

Court Opinion by Sutherland. The Court held that such was conspiracy in restraint of interstate trade and within the authority of the Duplex Co. case.

Sanford (concurred). On authority of Duplex Co. case.

Stone (concurred). He did so in these words. "As an original proposition I doubt whether Sherman act prohibited labor union from peaceably refusing to work on material produced by non-union labor even though interstate commerce affected. But concurred on strength of Duplex Co. case.

Brandeis and Holmes (dissent). They considered the restraint not an unreasonable one but one arising in the struggle for existence where individual workmen are cooperating for self protection. The Sherman act was held

in *United States v. Steel Corporation* to permit capitalists to combine in a single corporation 50% of steel industry of United States dominating the trade through its vast resources—. It would indeed be strange if Congress by the same act willed to deny to members of a small craft of workingmen the right to cooperate simply refraining to work when that course was the only means of self protection against a combination of militant and powerful employers." They cannot believe that Congress did so.

(17) *Texas and N. O. R. Co. v. Railway Clerks (1929)*. The Railway Labor act of 1926 stated that representatives for the purposes of the act shall be designated by the respective parties—without interference, influence or coercion exercised by either party over the self organization or designation of representatives by the other. The Railroad had sponsored company union against which the plaintiffs attempted to obtain injunction.

Court's Opinion by Hughes. This upheld injunction. Congress could take steps to safeguard the employes collective action. Such would be mockery if representation was made futile by interferences with freedom of choice. Instead of this being an invasion of constitutional rights it was recognition of both. Petitioners invoke the *Adair* and *Coppage* cases. But the present act does not interfere with normal exercise of the right of carrier to select its employes or discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employers to have representatives of their own choosing.