far-flung labor organization, each of whom has been empowered to stymie the entire bargaining process and thus deprive the Union of its right to act as bargaining agent. And a single official can do this very thing by refusing to make the affidavit for any reason or no reason. He may refuse solely because of an arbitrary or capricious attitude, because the terms of the statute are so vague as to make it uncertain whether the affidavit can be truthfully made, or because he belongs to the proscribed class. Thus, the section gathers within its devastating reach a Union all of whose officials save one are willing and able to make the affidavit.

The impact which this section has upon employees represented by the Union is even more pronounced. As illustrative, the Union in the instant situation has been duly selected by some 12,000 employees of an appropriate bargaining unit as their agent. The Board minimizes, in fact almost ignores, their predicament. Their interest is disposed of on the erroneous theory that their rights stem from Congress, and what Congress has given it can take away.

It is well to keep in mind, however, what the Board appears to overlook, that is, that employees have certain constitutional rights irrespective of any benefit bestowed by the Wagner Act or its successor. It has been held that the right "to organize for the purpose of securing redress of [fol. 425] grievances and to permit agreement with the employers relating to rates of pay and conditions of work" is a constitutional right, and that the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other material protection is fundamental. Further, that employees have as clear a right to organize and select their representatives for a lawful purpose as an employer has to organize its business and select its own officers and agents. *Labor Board* v. *Jones & Laughlin,* 301 U. S. 1, 33. And it has been held that the right of workmen or of Unions "to assemble and discuss their own affairs is as fully protected by the Constitution as the right of business men, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others." *Thomas* v. *Collins,* 323 U. S. 516, 539. And as employees have a constitutional right to organize, to select a bargaining agent of their own choosing and, if members of a Union, to elect the

officials of such Union, so I would think that the bargaining agent when so selected had a right of equal standing to represent for all legitimate purposes those by whom it had been selected. The employees in the instant situation have availed themselves of constitutional rights in selecting the Union as their bargaining agent and in the election of its officials.

At this point it is pertinent to observe that the Wagner Act was enacted primarily for the benefit of employees and not for Unions. The latter derive their authority from the employees when selected as their bargaining agent, rather than from the law. The very heart of the Act is contained in Sec. 7, which provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing * * *." This was not a Congress-created right but the recognition of a constitutional right, which Congress provided the means to protect. This is clearly shown by the declared policy of the Act that commerce be aided "by encouraging the practice and procedure of collective bargaining and by protecting the exercise of workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

[fol. 426] In my view, the condition attached to the Board's order in the instant case is a direct and serious impairment upon these constitutional rights of both the employees and the Union. The rights of the former to organize, select a bargaining agent of their own choosing and elect officers of the Union have been reduced to a state of meaningless gesture. See *Texas and N. O. R. Co.* v. *Ry. Clerks,* 281 U. S. 548, 570, and *Labor Board* v. *Jones & Laughlin, supra,* page 34.

In order to comply with the condition of the Board's order, they must select a bargaining agent not of their own choosing but one which conforms to the pattern which Congress has prescribed. The fundamental right to elect officers of their Union, untrammeled and unfettered, has been made subservient to the congressional edict as to the character of officials which will be tolerated. Not only does the section represent an intrusion by Congress in the internal affairs of a Union and its members, but it is legislative

coercion expressly designed to compel Union members to forego their fundamental rights. "Freedom of speech, freedom of the press, and freedom of religion all have a double aspect—freedom of thought and freedom of action. Freedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind." Murphy, J., dissenting in *Jones* v. *City of Opelika,* 316 U. S. 584, 618, subsequently a majority opinion of the court in 319 U. S. 103.

Contrast this philosophy with that which the Board attributes to the Act, as evidenced by the following statement: "The assumption is that if the facts are known through this filing procedure, union members * * * will soon remove Communists from leadership rather than allow themselves to be precluded from enjoying the benefits of the Act. *Northern Virginia Broadcasters, Inc.,* 75 N. L. R. B. No. 2."

But it is argued that employees have in their own hands the means of obtaining compliance by the selection of a bargaining representative whose officers are able and willing to make the affidavit. Assuming that employees are always members of a Union which acts as their bargaining agent, which is not the case, it is a shallow and unrealistic argument. How can employees when they select a Union as their bargaining agent know that each of its officers will be able [fol. 427] and willing to make the affidavit? And how can they compel such officers to do so subsequent to their election? How could the members rid their Union of an officer who refused to make the affidavit, for good reason or no reason? The record before us does not disclose who or how many officers refused to make the affidavit. Assuming, however, that it was Philip Murray, president of a national labor organization of which the instant union is an affiliate, how long, I wonder, would it take the 12,000 employees of the bargaining unit here involved to replace him with an officer who would comply? The Act provides that no election shall be directed in any bargaining unit wherein a valid election has been held within the preceding twelve-month period. Sec. 159 (c) (3). I do not think that the constitutional rights of the employees or the Union can be suspended in mid-air for a time of such dubious and uncertain length.

The upshot of the whole situation is that employees when members of a Union are under a continuing compulsion to elect officers who will meet the congressional prescription in order that their Union may remain in the good graces

of the Board, and they must do this even though it be contrary to their belief, conscience and better judgment. Experience, ability, honesty and integrity of candidates for official positions in the Union must be cast aside.

For similar reasons, the section also affects, and I think seriously impairs, the fundamental rights of Union officials. The affidavit prescribed is directed at the belief entertained by the affiant in contrast to conduct, behavior or action. Assuming *arguendo,* however, that it has no effect upon the constitutional right of an officer who refuses to make it, what about the effect upon those who comply? The right of the officers of a union to manage and control its affairs is a basic right and I would suppose to be exercised in accordance with the principle of majority rule. The section, however, limits the rights of the officers of a Union by making them dependent upon the affirmative action of each officer. The officers who make the affidavit, even though in the majority, are no better off than if they had refused. More than that, the affidavit, particularly in view of its vague and uncertain terms, is calculated to create in the mind of the maker a continuous apprehension lest the affiant make some expression, perform some act, have some association [fol. 428] or indulge in conduct which might later be used as evidence to show that the affidavit was false. As was said in the dissenting opinion in *Minersville School District* v. *Gobitis,* 310 U. S. 586, 606:

> "The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey, if it is to adhere to that justice and moderation without which no free government can exist."

In my view, Congress has attempted to do indirectly what it could not do directly under the Constitution. "In approaching cases, such as this one, in which federal constitutional rights are asserted, it is incumbent on us to inquire not merely whether those rights have been denied in express terms, but also whether they have been denied in substance and effect." *Oyama* v. *California,* 332 U. S. 633, 636.

Many cases are cited and relied upon in support of the

argument that Congress was reasonably justified in attaching the condition contained in Par. (h) as a prerequisite to the right of employees to compulsory bargaining. Without attempting to mention all of such cases, a few may be noted as typical. *Turner* v. *Williams,* 194 U. S. 279; *Hawker* v. *New York,* 170 U. S. 189; *Hamilton* v. *Board of Regents,* 293 U. S. 245, *United Public Workers* v. *Mitchell;* 330 U. S. 75. The strongest of these cases, in my judgment, is the *Mitchell* case. There, the question involved was the constitutionality of the Hatch Act, which forbade government employees to engage in political activity, admittedly a right protected by the First Amendment. There, the favor bestowed by Congress was governmental employment, and an employee had the choice between accepting the favor and foregoing his right to engage in political activity, or in declining the governmental favor and exercising such right. This is quite a contrast to the instant situation where the grant is bestowed upon the employees with the power lodged in a third person to prevent them from obtaining the benefit.

Turner v. *Williams, supra,* is of no benefit to the Board's position. There, it was held that Congress could properly make the privilege of immigration turn upon the political beliefs of the immigrant. As later pointed out in *Bridges* v. *Wixon,* 326 U. S. 135, 161, "Since an alien obviously [fol. 429] brings with him no constitutional rights, Congress may exclude him in the first instance for whatever reason it sees fit." In other words, an alien, at least in the first instance, is not entitled to the benefits of the Bill of Rights. In the *Hawker* case, *supra,* it was held that a State could constitutionally prevent persons who had previously been convicted of a felony from practicing medicine. The decision goes no further than holding that the State under its police power had the authority to fix the standards to be met by one who sought the privilege of administering to the health and well being of its citizens. In *Hamilton* v. *Board of Regents,* it was held that the State might properly bar from its colleges persons who refused to attend classes in military training. Again, the condition attached to the privilege could be met at the discretion of the person who sought to become the recipient of the State's favor.

A more relevant pronouncement is that contained in *Frost Trucking Co.* v. *R. R. Commission,* 271 U. S. 583. There,

the court held that Congress was without constitutional power to do indirectly what it was prohibited from doing directly in a matter wherein it had attached a condition to be performed as a prerequisite to the receipt of a benefit. The court on page 593 stated:

> "May it stand in the conditional form in which it is here made? If so, constitutional guaranties, so carefully safeguarded against direct assault, are open to destruction by the indirect but no less effective process of requiring a surrender, which, though, in form voluntary, in fact lacks none of the elements of compulsion. Having regard to form alone, the act here is an offer to the private carrier of a privilege, which the state may grant or deny, upon a condition, which the carrier is free to accept or reject. In reality, the carrier is given no choice, except a choice between the rock and the whirlpool,—an option to forego a privilege which may be vital to his livelihood or submit to a requirement which may constitute an intolerable burden."

The Board reviews at length the congressional history and other data for the purpose of demonstrating that Congress was reasonably justified in attaching the condition as a prerequisite to the enjoyment of the benefits which it had provided. As already pointed out, however, it did not give such beneficiaries the option of compliance or [fol. 430] noncompliance. The result of the congressional inquiry is summarized in the Board's brief as follows:

> "Congress was not unaware that Communist officers of labor organizations sometimes effectively represent the economic interests of members in collective bargaining, and in grievance adjustment, and that to this extent their activities do tend to effectuate the policies of the Act. But Congress believed that whatever public value Communist leadership of labor unions might have in this respect was clearly outweighed by the danger that they might, on other occasions, utilize their power and influence for purposes inimical to the policies of the Act and to national security."

Thus, notwithstanding this congressional recognition that some labor organizations with Communist officials were willing and able to cooperate in effectuating the

policies of the Act, it placed such Unions in the same category with those whose officials were unwilling to do so, and denied to each class alike the benefits and facilities which Congress had provided. By the same token, the rights of loyal and patriotic employees, as well as Union officials, were made to rest upon the affirmative act of "each" officer of the Union. So, if employees of a bargaining unit are willing to submit to the pressure which Par. (h) engenders and are fortunate enough to select a bargaining agent, each of whose officers will make the affidavit, such employees receive the benefits of the Act. Employees, however, who insist on maintaining their fundamental right to select a bargaining agent, or who for any reason have not succeeded in selecting a bargaining agent "each" officer of which is willing to comply, are deprived of the congressional grant. The same comparison may be made between competing Unions. One Union is permitted to represent its employees and the other is not. In my view, a statute which creates such a situation, especially considered in connection with its vague and indefinite requirements, is so arbitrarily discriminatory as to violate the due process clause of the Fifth Amendment. As was said in *Hurtado* v. *California,* 110 U. S. 516, 535:

> "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must be not a special rule for a particular person or a particular case * * *."

[fol. 431] See also *Nichols* v. *Coolidge,* 274 U. S. 531, and *United States* v. *Lovett,* 328 U. S. 303.

According to the Board's argument, the congressional target was Communist-dominated Unions. The legislative fire, however, was not directed merely at those whom it intended to disable. The range included a scope of far greater area. It encompassed what it recognized as good Communists as well as the bad. And of more importance it included countless patriotic employees and Union officials who carried no taint of Communism. All alike were made to suffer the same fate and required to answer for the sins of a few, even one. From a practical aspect, it is not unlike throwing a barrel of apples in the river in order to get rid of one that is rotten. From a legal viewpoint, it has the effect of arbtrarily singling out for legislative action a

particular person or group because of the personal belief of their associates. As was said in *Schneiderman* v. *United States,* 320 U. S. 118, 136:

> "* * * under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles."

That the section is void because of its vague and uncertain language appears plain. This is so both as to the persons within its scope and the subject matter of the required affidavit. "There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act, *Lanzetta* v. *New Jersey,* 306 U. S. 451, or in regard to the applicable tests to ascertain guilt." *Winters* v. *New York,* 333 U. S. 507, 515.

The section applies to "each officer of such labor organization and the officers of any national or international labor organization." Such officers are neither enumerated nor defined, either in the section in controversy or otherwise in the Act. While the record does not purport to disclose a list of such officers, it does show that the agreement between the Union and the company was signed by six officials of the national organization, including Philip J. Murray, as president, and by nine officers of the local Union. From the agreement it is discernible that there are twenty members of the grievance committee with authority to negotiate on the part of the Union, twenty assistant [fol. 432] members of the grievance committee, and a safety committee of equal number authorized to represent the Union in its dealings with the company concerning safety matters. I assume that there are hundreds of officers between the bottom and the top of this vast labor organization. The importance of the word "officer" is evident, particularly in view of the fact that "each officer" is given the power by refusal to make the affidavit to paralyze a Union and its members.

That those who come within the scope of the word "officer" have been left in a state of uncertainty and doubt is well illustrated by an opinion of the Labor Board, In

The Matter of *Northern Virginia Broadcasters, Inc., etc.*, and *Local Union No.* 1215, *in the National Brotherhood of Electrical Workers,* page 11, volume 75, Decisions and Orders of the N. L. R. B. In that case, the Regional Director, following instructions of the General Counsel of the Labor Board, dismissed the proceeding for failure of compliance with Sec. 9 (h) by the American Federation of Labor, with which the local Union was affiliated. The Board held that compliance by officials of the national organization was not required, on the ground that such a construction would make the section unworkable. There was a concurring and a dissenting opinion. The point is that the Board itself had great difficulty in deciding who were included in the term "officer," and the decision when made was by a divided Board. This emphasizes the difficult problem presented to officers of a Union in attempting to determine whether they are within the scope of persons required to make the affidavit.

The facts required to be stated in the affidavit are of such an uncertain and indefinite nature as to afford little more than a fertile field for speculation and guess. What is meant by a "member of the Communist party or affiliated with such party? How and when does a person become a member of that party, or any other party for that matter? And what does it mean to be "affiliated"? The Supreme Court, in *Bridges* v. *Wixon, supra,* devoted several pages to the meaning to be attributed to the word "affiliation," as used in the deportation statute. The court's discussion is convincing that its meaning would be quite beyond the reach of the ordinary citizen. As close as the court came to defining the term was (page 143), "It imports, however, less than membership but more than sympathy." The [fol. 433] court pointed out that cooperation with Communist groups was not sufficient to show affiliation with the party.

What does the word "supports" include? Does a person by voting for the candidates of a party or by attending its meetings and making contributions, or by buying its literature or books, become a supporter thereof? And how can the ordinary person possibly be expected to make an affidavit that he is not a member of any organization that believes in or teaches the overthrow of the United States Government "by any illegal or unconstitutional methods"? These are matters which perplex the Bench and the Bar,

and the diversity of opinion among Judges as to what is illegal and unconstitutional often marks the boundary line between majority and dissenting opinions.

See the recent case of *United States* v. *Congress of Industrial Organization,* 335 U. S. 106, and particularly the concurring opinion by four members of the court, which held unconstitutional Sec. 313 of the Federal Corrupt Practices Act of 1925, as amended by Sec. 304 of the instant Act, because of the vagueness and uncertainty of the phrase, "a contribution or expenditure in connection with any election * * *." The discussion is quite relevant to the instant situation. On page 153 it is stated:

> "Vagueness and uncertainty so vast and all-pervasive seeking to restrict or delimit First Amendment freedoms are wholly at war with the long-established constitutional principles surrounding their delimitation. They measure up neither to the requirement of narrow drafting to meet the precise evil sought to be curbed nor to the one that conduct proscribed must be defined with sufficient specificity not to blanket large areas of unforbidden conduct with doubt and uncertainty of coverage. In this respect the amendment's policy adds its own force to that of due process in the definition of crime to forbid such consequences. * * * Only a master, if any, could walk the perilous wire strung by the section's criterion."

The Board makes no serious argument but that the section is vague and uncertain as charged. It attempts to excuse its infirmities by contending (1) that its vagueness is cured by Sec. 35-A of the Criminal Code, and (2) that the rule against vagueness and uncertainty is not applicable because the statute is not compulsory. No authorities are [fol. 434] cited which sustain either proposition.

The substance of the argument in favor of the first proposition is that an officer of a Union need not be too much concerned about the truthfulness of the affidavit which he makes because he can only be convicted under Sec. 35-A of the Criminal Code for "knowingly and wilfully" making a false affidavit. In the Board's own words, "Clearly, no affiant could successfully be prosecuted under this section for filing a false affidavit under Sec. 9 (h) unless it could be proved that he knowingly lied in making

the averments contained in his affidavit." This statement, so I think, could be made concerning every prosecution for perjury. The Board makes the further puerile suggestion that an affiant need not be afraid of a groundless prosecution because "our law provides adequate modes of redress to victims of malicious prosecution."

To me, this argument is shocking and should be repudiated in no uncertain terms. Bluntly stated, it means that an officer of the Union who makes the affidavit need not be concerned with the sanctity of his oath because of the unlikelihood of conviction in case of a prosecution for perjury. He need not be afraid because the only danger which he assumes is the hazard of a prosecution which when unsuccessful leaves him as the possessor of a damage suit against his accuser in an action for malicious prosecution. This argument is a persuasive indication that the section should be invalidated because of its vagueness and uncertainty.

Neither do I think there is any merit in the suggestion that the authorities as to vagueness and uncertainty are inapplicable because the making of the affidavit is voluntary. In reality, the making of the affidavit is indispensable if the Union is to survive and the rights of its members protected. It is made at the invitation of Congress, and I can discern no reason why the rule as to uncertainty and vagueness should not be applied. The reason for the rule, as the authorities show, is that persons of ordinary intelligence may not be required to guess or speculate at the meaning of a statute, and every reason of which I can think which entitles the maker of a compulsory affidavit to such information exists in the instant situation. The need for this information is emphasized from the fact that the section serves notice that one who makes a false affidavit is subject to prosecution for perjury.

[fol. 435] I would hold Sec. 9(h) unconstitutional and direct the elimination of the condition which the Board has attached to its order.

Judge Kerner. I concur in Judge Major's opinion that the Board properly determined that pension and retirement plans constitute part of the subject matter of compulsory collective bargaining under the Act, but I am not persuaded that §9(h) of the Act is invalid.

The Union's principal contention is that the condition imposed by the Board's order and the Congressional policy

embodied in §9(h) which the order effectuates, invade the right to freedom of speech and deny freedom of political belief activity. It insists that § 9 (h) "is an attempt to restrict freedom of belief"; that the section is "primarily if not exclusively a restraint upon opinion and belief," and that it "imposes sanctions for the alleged evil of harboring 'dangerous thoughts.' "

In support of its contention the Union cites among others the cases appearing in the margin.[1] A study of these cases discloses that in them the court was concerned with the effect of legislation, or judicial action, which imposed a prior restraint upon speech, press or assembly, or which restricted the occasion for permissible exercise of speech, press or assembly, or which punished the individuals for having published their views.

It is to be borne in mind that the Act was not passed because Congress disapproved of the views and beliefs of Communists, but because Congress recognized that the practices of persons who entertained the views presently to be discussed, might not use the powers and benefits conferred by the Act for the purposes intended by Congress, so, in my view, the question is whether Congress, by providing that the facilities of the Board shall not be available to a labor organization unless each of its officers shall file an affidavit with the Board that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, does not belong to, or support any organization believing in or teaching the overthrow of the [fol. 436] United States Government by force or by any illegal or unconstitutional methods, violated the Constitution.

It is to be remembered that neither belief, nor speech, nor association is the subject matter of the policy of §9(h) and that neither that section nor the Board's order imposes any limitation upon what any labor leader may think

---

[1] Stromberg v. California, 283 U. S. 359; DeJonge v. Oregon, 299 U. S. 353; Herndon v. Lowry, 301 U. S. 242; Schneider v. State, 308 U. S. 147; Cantwell v. Connecticut, 310 U. S. 296; Bridges v. California, 314 U. S. 252; West Virginia State Board of Education v. Barnette, 319 U. S. 624; Murdock v. Pennsylvania, 319 U. S. 105; Thomas v. Collins, 323 U. S. 516; and Saia v. New York, 334 U. S. 558.

or say, nor does the order or §9(h) attempt to prohibit or restrain anyone from joining or supporting any organization. Neither the order nor §9(h) denies to Communists the right to speak and to publish freely their views, beliefs and opinions. They may speak as they think. There is no invasion of political rights. Communists are not denied the right to continue to remain members of the Communist Party. The section does not make such affiliation of beliefs punishable either criminally or by the imposition of civil sanctions. In such a situation the cases cited by the Union are inapplicable and hence not controlling here, but as was said in *National Maritime Union* v. *Herzog,* 78 F. Supp. 146, 163, "It is therefore clearly wrong to say that §9(h) impinges on a union officers' freedom of speech."

It is unquestioned that Congress may conclude that the policies of the Act, i.e., stimulation of commerce and the security interests of the nation would be deterred by an extension of the benefits of the Act to labor organizations dominated by officers who are Communists or supporters of organizations dominated by Communists, and that it may take steps to effectuate its conclusions. In fact 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 the power to enact 'all appropriate legislation' * * *. That power is plenary and may be exerted to protect interstate commerce 'no matter what the source of the dangers which threaten it.' " *National Labor Regulations Board* v. *Jones & Laughlin Steel Corp.,* 301 U. S. 1, 36. Nevertheless, the Union contends that §9(h) contravenes the guarantees of the Ninth and Tenth Amendments. It insists that the instant case involves more than a regulatory measure, and it argues that if the statute is viewed as one "restricting expression of advocacy," it fails to meet the clear and present danger test.

[fol. 437] While it is true that "a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having no rational relation to the reg-

ulated activities," cannot be supported under the Constitution, *Kotch* v. *Board of River Port Pilot Commissioners,* 330 U. S. 552, 556, yet Congress has the power to withhold benefits which it confers for the accomplishment of legitimate purposes within its constitutional powers from those who, it has cause to believe, may utilize those benefits for directly opposite purposes. For example, in *Turner* v. *Williams,* 194 U. S. 279, it was held that Congress could properly make the privilege of immigration turn upon the political beliefs of the immigrant, and in *United Public Workers* v. *Mitchell,* 330 U. S. 75, it was held that in the exercise of its power to promote the efficiency of the public service, Congress could properly bar from public employment persons who exercised their constitutional right to engage in political activity. And in *Oklahoma* v. *Civil Service Commission,* 330 U. S. 127, 143, it was held that Congress in the exercise of its powers to "fix the terms upon which its money allotments to states shall be disbursed," could constitutionally deny allotments to states which refuse to remove from their payrolls employees who engage in political activity. See also *In re Summers,* 325 U. S. 561; *Hamilton* v. *Board of Regents,* 293 U. S. 245; *Hawker* v. *New York,* 170 U. S. 189; *Clarke* v. *Deckebach,* 274 U. S. 392; and *Kotch* v. *Board of River Port Pilot Commissioners, supra.* And where factors relevant to the attainment of legitimate legislative policies are shown, their use as a basis for distinction is not to be condemned. *Hirabayashi* v. *United States,* 320 U. S. 81, 101. That being so, I think it well to inquire whether there are factors reasonably related to the attainment of the objectives which Congress sought to promote.

Unquestionably, the Labor Management Relations Act, 1947, 61 Stat. 136, was designed to lessen industrial disputes. This purpose is clearly shown in the declaration of policy, §1(b) of the Act, and in the amendment to the findings and policies contained in § 1 of the National Labor Relations Act.

Prior to the passage of the National Labor Relations Act, employers were free to discharge employees for joining labor organizations, and to refuse to bargain collectively with labor organizations which represented their employees. And it is clear that when Congress enacted that [fol. 438] Act it sought to minimize strikes in industries af-

fecting commerce by promoting the process of collective bargaining as a practice conducive to friendly adjustments of disputes over wages, hours and working conditions between employers and employees. In doing this, Congress imposed new obligations upon employers and provided administrative machinery for the enforcement of those obligations, but it did not impose those duties because it was under a constitutional obligation to employees or labor organizations to do so. On the contrary, the statute was enacted solely because Congress deemed the imposition of those duties desirable as a means of protecting the public interest in the free flow of commerce, but the benefits of the Act could not be extended to shield concerted activities which Congress had not intended to protect, *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31, and any benefit which employees or labor organizations derived from the enforcement of these public rights was entirely incidental to the public purposes which enforcement was designed to achieve. True, under the Act, the Board acts in a public capacity, but not for the adjudication of private rights; rather it exists to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by encouraging collective bargaining. The entire scheme of the statute emphasizes this point, and the Supreme Court has so held, *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177; and *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 319 U. S. 9.

Before the enactment of §9(h), hearings were conducted by Congressional committees which showed that Communists did not view labor unions primarily as instrumentalities for the attainment of legitimate economic aims; that certain practices of some labor organizations whose officers were members of or supporters of the Communist Party tended to foment industrial unrest and strife; and that these practices were inimical to the purposes for which the protection of the Act had been granted. From the evidence thus produced and considered Congress believed that Communists and their supporters and persons who advocate the violent overthrow of the Government, when they attain positions of power and leadership in a labor

[fol. 439] organization might not practice collective bargaining as a method of friendly adjustment of employer-employee disputes, but instead might use their position as a vehicle for promoting dissension and strife between employers and employees, and that Communists and their supporters and persons who advocate violent overthrow of the Government, if in control of labor organizations, might provoke strikes disruptive of commerce, not for the purpose of improving the economic lot of union members, but to develop political power to achieve political ends and hence, Congress, in the exercise of its discretion, concluded that extension of the benefits of the Act to such labor organizations would not serve to promote the policies of the Act, but might endanger national interests. The reasonableness of that conclusion was for Congress to determine, *North American Co.* v. *Securities & Exchange Commission,* 327 U. S. 686, 708, and since there existed a substantial basis in fact for the conclusion reached by Congress, it seems to me that it was rational for Congress to conclude that members of the Communist Party or persons affiliated with such party who believe in and teach the overthrow of the United States Government by force or by any illegal or unconstitutional methods were more likely than others to misuse the powers which inhere in union office. Hence I conclude that Congress acted within its constitutional powers.

The point is made that the section is invalid because the phrases "any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods," "affiliated with," and the word "supports" are vague and indefinite and must fall before the First, Fourth and Fifth Amendments. For the reasons set forth in *National Maritime Union* v. *Herzog, supra,* I think the contention lacks merit. In addition, I believe that the statue is as specific as the nature of the problem permits. Compare *Dunne* v. *United States,* 138 F. 2d 137, 143. Moreover, the language is not so vague that men of common intelligence would have to guess at its meaning and differ as to its application. It requires only that persons who knowingly engage in the activities set forth in §9(h), or who knowingly believe in the enumerated doctrines, or who knowingly support organizations which diseminate such doctrines, shall not obtain access to the machinery set up by Congress for

the purpose of advancing a specific public policy; hence [fol. 440] if an affiant honestly believes that he is not affiliated with the Communist Party, that he does not support any organization which to his knowledge teaches the overthrow of the United States Government by means which he knows to be illegal or unconstitutional, such an affiant would be in no danger of conviction under Sec. 35(A) of the Criminal Code, 18 U. S. C. A. §80. Compare *United States* v. *Gilliland,* 312 U. S. 86, 91; *Screws* v. *United States,* 325 U. S. 91, 101-105. See also *United States v. Petrillo,* 332 U. S. 1.

The point is made that §9(h) is a bill of attainder, because, so it is said, the section proceeds not by way of defining a harmful activity and setting up sanctions against such activity, but by way of a legislative declaration of the guilt of individuals and groups with respect to engaging in such activities.

In my opinion this contention is unsound. A bill of attainder is a legislative act which inflicts punishment without a judicial trial. *Cummings* v. *The State of Missouri,* 71 U. S. 277, 323. Section 9(h) does not rest upon any finding of guilt, but like the disqualification of convicted felons from medical practice in *Hawker v. New York, supra,* and the disqualification of aliens from operating poolrooms in *Clarke v. Deckebach, supra,* it operates not to impose punishment but to safeguard important public interests against potential evil. And as was said by Mr. Justice Murphy, "nothing in the Constitution prevents Congress from acting in time to prevent potential injury to the national economy from becoming a reality." *North American Co.* v. *Securities & Exchange Commission, supra,* 711.

I conclude the petitions to set aside the Board's order ought to be denied and the request for its enforcement granted.

JUDGE MINTON *concurs* in this opinion.

[fol. 441] And on the same day, to-wit, on the twenty-third day of September, 1948, the following further proceedings were had and entered of record, to-wit:

No. 9612

INLAND STEEL COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the petition to set aside the order of the National Labor Relations Board entered in this cause on April 12, 1948, be denied and that the Board's request for enforcement of the said order be granted.

No. 9634

UNITED STEEL WORKERS OF AMERICA, C.I.O., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the petition to set aside the order of the National Labor Relations Board entered in this cause on April 12, 1948, be denied and that the Board's request for enforcement of the said Order be granted.

[fol. 442] And afterward, to-wit, on the twenty-eighth day of October, 1948, the following further proceedings were had and entered of record, to-wit:

[fol. 443] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 9612

INLAND STEEL COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

No. 9634

UNITED STEEL WORKERS OF AMERICA, C. I. O., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

ON PETITIONS FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

DECREE

The National Labor Relations Board having issued its order against Inland Steel Company on April 12, 1948, Inland Steel Company having petitioned this Court for review of said order, and United Steelworkers of America, C.I.O., et al., having petitioned this Court for review of certain portions of said order, and National Labor Relations Board by its cross prayer having prayed for the enforcement of said order, and this Court having considered said petitions and cross prayer and issued its decision on September 23, 1948, enforcing said order, it is hereby

Ordered, adjudged, and decreed that Inland Steel Company and its officers, agents, successors, and assigns shall

[fol. 444] 1. Cease and desist from:

(a) Refusing to bargain collectively with Local Unions Nos. 1010 and 64, United Steelworkers of America (CIO) (hereinafter called "the Union") with respect to its pension and retirement policies, if and when

said labor organization shall have complied within thirty (30) days from the date of this Decree (or, in the event that the Union shall file a petition for a writ of certiorari in the Supreme Court of the United States within the time limited by law, then within thirty (30) days after the denial of such petition, or, if said petition be granted, within (30) days after the issuance of the mandate of the Supreme Court of the United States in the proceedings upon said writ of certiorari) with Section 9 (h) of the Act as amended, as the exclusive bargaining representative of all production, maintenance, and transportation workers in the Indiana Harbor, Indiana, and Chicago Heights, Illinois, plants of Inland Steel Company, excluding foremen, assistant foremen, supervisory, office and salaried employees, bricklayers, timekeepers, technical engineers, technicians, draftsmen, chemists, watchmen, and nurses;

(b) Making any unilateral changes, affecting any employees in the unit represented by the Union, with respect to its pension and retirement policies without prior consultation with the Union, when and if the Union shall have complied with the filing requirements of the Act, as amended, in the manner set forth above.

[fol. 445] 2. Take the following affirmative action:

(a) Upon request and upon compliance by the Union with the filing requirements of the Act, as amended, in the manner set forth above, bargain collectively with respect to its pension and retirement policies with the Union as the exclusive representative of all its employees in the aforesaid appropriate unit;

(b) Post in conspicuous places throughout its plants at Indiana Harbor, Indiana, and Chicago Heights, Illinois, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board for the Thirteenth Region, shall, after being duly signed by the representative of Inland Steel Company, be posted by Inland Steel Company immediately upon receipt thereof and maintained by it for thirty (30) consecutive days thereafter and also for an additional thirty (30) consecutive days in the event of com-

pliance by the Union with the filing requirements of the Act, as amended, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Inland Steel Company to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Thirteenth Region aforesaid in writing, within ten (10) days from [fol. 446] the date of this Decree, and again within ten (10) days from the future date, if any, on which Inland Steel Company is officially notified that the Union has met the condition hereinabove set forth, what steps it has taken to comply herewith.

Dated this 28th day of October, 1948.

J. Earl Major, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Otto Kerner, Judge, United States Circuit Court of Appeals for the Seventh Circuit; Sherman Minton, Judge, United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 447] APPENDIX A

Notice to all Employees: Pursuant to decree of the United States Circuit Court of Appeals enforcing a decision and order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees:

We will not refuse to bargain collectively with Local Unions Nos. 1010 and 64 of the United Steelworkers of America (CIO), as the exclusive representative of all of the employees in the bargaining unit described herein with respect to our pension and retirement policies, provided said labor organization complies, within the time allowed for such compliance by the decree of the Circuit Court of Appeals enforcing the said Order of the National Labor Relations Board, with Section 9 (h) of the National Labor Relations Act, as amended.

We will not make any unilateral changes in our pen-

sion and retirement policies affecting any employees in the bargaining unit without prior consultation with the Union, provided said labor organization complies within the time allowed for such compliance as above set forth, with Section 9 (h) of the National Labor Relations Act, as amended.

The bargaining unit is: all production, maintenance and transportation workers in our Indiana Harbor, Indiana, and Chicago Heights, Illinois, plants, exclud-
[fol. 448] ing foremen, assistant foremen, supervisory, office, and salaried employees, bricklayers, timekeepers, technical engineers, technicians, draftsmen, chemists, watchmen and nurses.

Inland Steel Company (Employer), by —— ——
(Representative), —— (Title).

Dated —— —, ——.

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

[fol. 449] And on the same day, to-wit, the twenty-eighth day of October, the following further proceedings were had and entered of record, to-wit:

No. 9612

INLAND STEEL COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

No. 9634

UNITED STEEL WORKERS OF AMERICA, C. I. O., et al., Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

ON PETITIONS FOR REVIEW OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

On petition of counsel for the Inland Steel Company, one of the Petitioners in the above entitled cause, it is or-

dered by the Court that the certification and issuance to the National Labor Relations Board of the Final Decree, entered by this Court in this cause today, be, and the same is hereby, stayed for a period of thirty (30) days.

[fol. 450] And afterward, to-wit, on the second day of November, 1948, there was filed in the office of the Clerk of this Court a Joint Designation of Transcript of Record, which Designation is in the words and figures following, to-wit:

[fol. 451] IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 9612

INLAND STEEL COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

No. 9634

UNITED STEEL WORKERS OF AMERICA, C. I. O., et al., Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Joint Designation of Transcript of Record for Use in the Supreme Court of the United States

The Clerk of this Court is hereby requested to prepare a Transcript of Record, for use in the Supreme Court of the United States on the several petitions for Certiorari to be filed by the parties to this joint Designation of Transcript of Record, consisting of the following parts of the proceedings before the Court of Appeals in the above entitled consolidated causes, and to certify such Transcript as having been prepared pursuant to this Joint Designation:

1. An appropriate entry showing filing of Petition to Review and Set Aside an Order of the National Labor Relations Board, filed by petitioner Inland Steel Company [fol. 452] on April 30, 1948, in No. 9612, with reference to

Appendix to said Petitioner's Brief in No. 9612, filed June 26, 1948, as containing such petition.

2. Petition for Review, filed in No. 9634, by petitioners United Steelworkers of America, C. I. O., et al., on June 9, 1948.

3. Order of Court consolidating causes Nos. 9612 and 9634, entered June 11, 1948.

4. An appropriate entry showing filing by National Labor Relations Board of Transcript of Record of Proceedings before Board, filed June 14, 1948, with reference to the three Appendices filed respectively, by Petitioner in No. 9612 on June 26, 1948, by Petitioner in No. 9634 on June 26, 1948, and by Respondent National Labor Relations Board on July 14, 1948, stating that the said three appendices contain all material portions of such Record.

5. An appropriate entry showing filing of Answer of National Labor Relations Board to Petitions of Petitioners in No. 9612 and No. 9634 to review order of National Labor Relations Board filed June 21, 1948, with reference to Appendix to Petitioner's Brief in No. 9612, filed June 26, 1948 as containing such Answer.

6. Order entered June 23, 1948 granting United Steelworkers leave to intervene in No. 9612.

7. An appropriate entry showing filing of Appendix to Petitioner's Brief in Cause No. 9612, filed June 26, 1948, with reference to such Appendix certified under separate cover as a part of this Transcript.

8. An appropriate entry showing filing of Appendix to Petitioner's Brief in Cause No. 9634, filed June 26, 1948, [fol. 453] with reference to such Appendix certified under separate cover as a part of this Transcript.

9. An appropriate entry showing filing of Appendix to Respondent's Consolidated Brief in No. 9612 and No. 9634, filed July 14, 1948, with reference to such Appendix certified under separate cover as a part of this Transcript.

10. Order of July 21, 1948, of hearing and taking Cause under advisement.

11. Answer of National Labor Relations Board to petitioner's motion (in No. 9612) to strike certain matter from the Appendix to the Board's Brief, filed July 22, 1948.

12. Opinion of Court, filed Sept. 23, 1948.

13. Order of court on opinion, entered September 23, 1948.

14. Decree of Court, entered October 28, 1948.

15. Order staying mandate, entered October 28, 1948.
16. Copy of present Joint Designation of Transcript of Record.
17. Certificate of Clerk to the Transcript of Record.

Ernest S. Ballard, Merrill Shepard, 120 South La Salle Street, Chicago 3, Illinois, Attorneys for Inland Steel Company, Petitioner in No. 9612; [fol. 454] Arthur J. Goldberg, Frank Donner, Abraham W. Brussell, 718 Jackson Place, N. W., Washington 6, D. C., Attorneys for United Steelworkers of America, C. I. O., et al., Petitioners in No. 9634 and Intervenors-Respondents in No. 9612.

[fol. 455] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of papers filed and proceedings had in accordance with the joint designation of record filed in this Court on Nov. 2, 1948, in No. 9612, Inland Steel Company, Petitioner, vs. National Labor Relations Board, Respondent, and Cause No. 9634, United Steel Workers of America, C. I. O., et al., Petitioners, vs. National Labor Relations Board, Respondent, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this fifth day of November A. D. 1948.

Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal.)

[fol. 456] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 17, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 336.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 457] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD—Filed January 18, 1949

It is hereby stipulated by the United Steelworkers of America, et al., petitioners, and by the National Labor Relations Board, respondent, that the printed appendix filed by United Steelworkers of America, et al. in the United States Court of Appeals for the Seventh Circuit, and the proceedings in that court heretofore printed by the Clerk of the United States Supreme Court, shall constitute the record in the above case in the Supreme Court.

Arthur J. Goldberg, Counsel for Petitioners; Philip B. Perlman, Solicitor General.

Dated: January 18, 1949.