One of Brandeis’s basic premises was that human beings had the right to govern themselves in the economic as well as the political sphere. When he discovered that was impossible for factory workers unless they were organized, he became an advocate of unionization. Power had to be balanced by power. Neither employers nor employees could be permitted to dominate, so that while Brandeis supported unionization, he deplored misuse of power by unions as well as employers. He opposed the closed union shop not only because it forced workers to join the union but because he thought the presence of nonunion workers would help balance the power of the union.

As he realized that unions were too weak to overcome the enormous concentrated power of the trusts, which had been enabled to grow by governmental policies designed to aid them, he began to call for governmental action to remedy the situation. He would have preferred nongovernmental solutions but recognized that only the government was sufficiently strong to create policies such as those limiting the maximum hours of laborers. Eventually he found himself willing to go further and defend minimum wage laws, in both cases to give workers the leisure time and access to the necessities of life that would enable them to fulfill themselves and participate fully in the political process. Recognizing that employers were becoming wealthy as the result of other people’s labor, he started to talk about profit sharing. His experience with the governance agreement that had grown out of the 1910 New York garment workers’ strike taught him that the mere creation of employee-employer committees within the framework of capitalist ownership was insufficient to overcome the differing goals of owners and workers. Eventually, as he read about workers’ and consumers’ cooperatives in England and Scandinavia, he became excited about the possibilities for worker-participation in American companies. At that point, however, he joined the Supreme Court, and whatever specific proposals he might have designed to achieve industrial democracy on
an egalitarian basis were put aside because of the new demands on his time and the constraints on his activities.

Brandeis differed from many Progressives in concerning himself with the human fulfillment of the workers in addition to their material welfare. He told congressional committees and federal commissions that the development of the individual had to take place both in the factory and in the world outside of it and that people could not develop if they spent much of their day in a work situation over which they had no control. He disliked socialism for the big, concentrated bureaucracies he thought were implicit in it, and so the only possible solution was to bring Jeffersonianism into the industrial era: to make workers economically independent by making them their own employers. "In a democratic community," he said in 1915, "we naturally long for that condition where labor will hire capital, instead of capital hiring labor." That would be fair; it also would solve the problem of over concentration of power in the workplace.

There was no difference in his ideas after he joined the Court; the only novelty lay in the forum and manner in which he expressed them. Recognizing that there was no single acceptable answer to the problems of the workplace, he retained his support for unions as a balance to employer power and for experimentation by legislatures with statutes protective of workers and of labor techniques such as picketing and boycotts. Experimentation was the only intelligent way to proceed, and as long as a legislating body could produce facts to demonstrate that its solution to a social problem was not completely unreasonable, it was the obligation of the Court to interpret the Constitution so as to permit the experimental law to stand.

"THE INCORPORATION OF TRADES UNIONS,"
DEBATE WITH SAMUEL GOMPERS, 1902

Brandeis was convinced that unions were needed to ensure decent working conditions. He opposed irresponsibility by any person or institution, however, and recognized that labor leaders were as fallible as other human beings. Employers and the community had no way of punishing unions and union members that acted irresponsibly, short of jailing them or enjoining them from striking, because there was no formal legal entity to sue. He opposed injunctions against strikes, because injunctions frequently were employed to interfere with the legitimate
expression of grievances. As an alternative, he proposed incorporation of unions, which would make them legally liable when and if they acted irresponsibly. That approach was not unexpectedly opposed by labor leaders such as Samuel Gompers, president of the American Federation of Labor, who feared that lawsuits against unions would be misused in the same manner as injunctions. The public debate between these two champions of organized labor took place shortly after a sweeping injunction had been issued against striking anthracite coal miners.

Lest what I say on the advisability of incorporating trade unions be misunderstood, it seems wise to state at the outset my views of their value to the community.

They have been largely instrumental in securing reasonable hours of labor and proper conditions of work; in raising materially the scale of wages, and in protecting women and children from industrial oppression.
The trade unions have done this, not for the workingmen alone, but for all of us; since the conditions under which so large a part of our fellow citizens work and live will determine, in great measure, the future of our country for good or for evil.

This improvement in the condition of the workingmen has been almost a net profit to the community. Here and there individuals have been sacrificed to the movement; but the instances have been comparatively few, and the gain to the employees has not been attended by a corresponding loss to the employer. In many instances, the employer's interests have been directly advanced as an incident to improving the conditions of labor; and perhaps in no respect more than in that expressed by a very wise and able railroad president in a neighboring State, who said: "I need the labor union to protect me from my own arbitrariness."

It is true that the struggle to attain these great ends has often been attended by intolerable acts of violence, intimidation and oppression; but the spirit which underlies the labor movement has been essentially noble. The spirit which subordinates the interests of the individual to that of the class is the spirit of brotherhood—a near approach to altruism; it reaches pure altruism when it involves a sacrifice of present interests for the welfare of others in the distant future.

Modern civilization affords no instance of enlightened self-sacrifice on so large a scale as that presented when great bodies of men calmly and voluntarily give up steady work, at satisfactory wages and under proper conditions, for the sole reason that the employer refuses the recognition of their union, which they believe to be essential to the ultimate good of the workingmen. If you search for the heroes of peace, you will find many of them among those obscure and humble workmen who have braved idleness and poverty in devotion to the principle for which their union stands.

And because the trade unions have accomplished much, and because their fundamental principle is noble, it is our duty, where the unions misconduct themselves, not to attack the unions, not—ostrich-like—to refuse to recognize them, but to attack the abuses to which the unions, in common with other human institutions, are subject, and with which they are afflicted; to remember that a bad act is no worse, as it is no better, because it has been done by a labor union and not by a partnership or a business corporation. If unions are lawless, restrain and punish their lawlessness; if they are arbitrary, repress their arbitrar-
ness; if their demands are unreasonable or unjust, resist them; but do not oppose the unions as such.

Now, the best friends of labor unions must and should admit that their action is frequently hasty and ill-considered, the result of emotion rather than of reason; that their action is frequently arbitrary, the natural result of the possession of great power by persons not accustomed to its use; and that the unions frequently ignore laws which seem to hamper them in their efforts, and which they therefore regard as unjust. For these defects, being but human, no complete remedy can be found; but the incorporation of labor unions would, among other things, tend in some measure to correct them.

The general experience in this country, in respect at least to the great strikes, has been that success or failure depended mainly upon whether public opinion was with or against the strikers. Nearly every American who is not prejudiced by his own peculiar interests recognizes the value of labor unions. Nearly every American who is not himself financially interested in a particular controversy sympathizes thoroughly with every struggle of the workingmen to better their own condition. But this sympathy for the working-men is quickly forfeited whenever the conduct of the strikers is unreasonable, arbitrary, lawless or unjust. The American people with their common sense, their desire for fair play and their respect for law, resent such conduct. The growth and success of labor unions, therefore, as well as their usefulness to the community at large, would be much advanced by any measures which tend to make them more deliberate, less arbitrary, and more patient with the trammels of a civilized community. They need, like the wise railroad president to whom I referred, something to protect them from their own arbitrariness.

TRUAX V. CORRIGAN, 1921

The Arizona legislature agreed with Brandeis that injunctions were used primarily as an anti-unionism measure, and it enacted a law restricting their use in labor disputes. The law was challenged by a restaurant owner whose premises were being picketed and who had applied unsuccessfully for an injunction. By then Brandeis had been on the Supreme Court for five years. Chief Justice Taft and the majority of the Court struck down the law. Brandeis's dissent contended, as he had argued in 1902, that limiting injunctions was a reasonable social experi-
ment. Here he added that it in no way violated the Constitution and that courts had to permit legislative experimentation if society was to progress.

MR. JUSTICE BRANDEIS, dissenting.

The first legislature of the State of Arizona adopted in 1913 a Civil Code. By Title 6, c. III, it sets forth conditions and circumstances under which the courts of the State may or may not grant injunctions. Paragraph 1464 contains, among other things, a prohibition against interfering by injunction between employers and employees, in any case growing out of a dispute concerning terms or conditions of employment, unless interposition by injunction is necessary to protect property from injury through violence. Its main purpose was doubtless to prohibit the courts from enjoining peaceful picketing and the boycott. With the wisdom of the statute we have no concern. Whether Arizona in enacting this statute transgressed limitations imposed upon the power of the States by the Fourteenth Amendment is the question presented for decision.

The employer has, of course, a legal right to carry on his business for profit; and incidentally the subsidiary rights to secure and retain customers, to fix such prices for his product as he deems proper, and to buy merchandise and labor at such prices as he chooses to pay. This right to carry on business, be it called liberty or property—has value; and, he who interferes with the right without cause renders himself liable. But for cause the right may be interfered with and even be destroyed. Such cause exists when, in the pursuit of an equal right to further their several interests, his competitors make inroads upon his trade, or when suppliers of merchandise or of labor make inroads upon his profits. What methods and means are permissible in this struggle of contending forces is determined in part by decisions of the courts, in part by acts of the legislatures. The rules governing the contest necessarily change from time to time. For conditions change; and, furthermore, the rules evolved, being merely experiments in government, must be discarded when they prove to be failures.

Practically every change in the law governing the relation of employer and employee must abridge, in some respect, the liberty or property of one of the parties—if liberty and property be measured by the standard of the law theretofore prevailing. If such changes are made by acts of the legislature, we call the modification an exercise of the police
power. And, although the change may involve interference with existing liberty or property of individuals, the statute will not be declared a violation of the due process clause, unless the court finds that the interference is arbitrary or unreasonable or that, considered as a means, the measure has no real or substantial relation of cause to a permissible end . . .

Whether a law enacted in the exercise of the police power is justly subject to the charge of being unreasonable or arbitrary, can ordinarily be determined only by a consideration of the contemporary conditions, social, industrial and political, of the community to be affected thereby. Resort to such facts is necessary, among other things, in order to appreciate the evils sought to be remedied and the possible effects of the remedy proposed. Nearly all legislation involves a weighing of public needs as against private desires; and likewise a weighing of relative social values. Since government is not an exact science, prevailing public opinion concerning the evils and the remedy is among the important facts deserving consideration; particularly, when the public conviction is both deep-seated and widespread and has been reached after deliberation . . . Hence, in passing upon the validity of a law challenged as being unreasonable, aid may be derived from the experience of other countries and of the several States of our Union in which the common law and its conceptions of liberty and of property prevail . . .

The divergence of opinion in this difficult field of governmental action should admonish us not to declare a rule arbitrary and unreasonable merely because we are convinced that it is fraught with danger to the public weal, and thus to close the door to experiment within the law.

[The next paragraphs contain a summary of laws regarding unions, the right to strike, picketing, and boycotts in England, Australia, New Zealand, and Canada. They are followed by a similar survey of American laws and the changes in them.]

The earliest reported American decision on peaceful picketing appears to have been rendered in 1888; the earliest on boycotting in 1886. By no great majority the prevailing judicial opinion in America declares the boycott as commonly practiced an illegal means, while it inclines towards the legality of peaceful picketing. But in some of the States, notably New York, both peaceful picketing and the boycott are declared permissible. Judges, being thus called upon to exercise a quasi-legislative function and weigh relative social values, naturally differed in their conclusions on such questions . . .

It was asserted that in these proceedings [applying for an injunction]
an alleged danger to property, always incidental and at times insignificant, was often laid hold of to enable the penalties of the criminal law to be enforced expeditiously without that protection to the liberty of the individual which the Bill of Rights was designed to afford; that through such proceedings a single judge often usurped the functions not only of the jury but of the police department; that, in prescribing the conditions under which strikes were permissible and how they might be carried out he usurped also the powers of the legislature; and that incidentally he abridged the constitutional rights of individuals to free speech, to a free press and to peaceful assembly.

It was urged that the real motive in seeking the injunction was not ordinarily to prevent property from being injured nor to protect the owner in its use, but to endow property with active, militant power which would make it dominant over men. In other words, that, under the guise of protecting property rights, the employer was seeking sovereign power. And many disinterested men, solicitous only for the public welfare, believed that the law of property was not appropriate for dealing with the forces beneath social unrest; that in this vast struggle it was unwise to throw the power of the State on one side or the other according to principles deduced from that law; that the problem of the control and conduct of industry demanded a solution of its own; and that, pending the ascertainment of new principles to govern industry, it was wiser for the State not to interfere in industrial struggles by the issuance of an injunction.

Such was the diversity of view concerning peaceful picketing and the boycott expressed in judicial decisions and legislation in English-speaking countries when in 1913 the new State of Arizona, in establishing its judicial system, limited the use of the injunction and when in 1918 its Supreme Court was called upon to declare for the first time the law of Arizona on these subjects. In that case the Supreme Court [of Arizona], . . . rejecting the view held by the federal courts and the majority of the state courts on the illegality of the boycott, specifically accepted the law of New York, Montana and California, citing the decisions of those States . . . It rejected the law of New Jersey, Minnesota and Pennsylvania that it is illegal to circularize an employer's customers, and again adopted the rule declared in the decisions of the courts of New York, Montana, California and Connecticut. In deciding these three points the Supreme Court of Arizona made a choice between well-established precedents laid down on either side by some of
the strongest courts in the country. Can this court say that thereby it deprived the plaintiff of his property without due process of law?

For these reasons . . . the judgment of the Supreme Court of Arizona should, in my opinion, be affirmed . . . because in permitting damage to be inflicted by means of boycott and peaceful picketing Arizona did not deprive the plaintiffs of property without due process of law or deny them equal protection of the laws.

"THE EMPLOYER AND TRADES UNIONS," 1904

In 1904, Brandeis represented the Typothetæ, an association of printing houses, in its fight with the Typographical Union. He did so because he considered the workers to be acting irresponsibly in this instance. The details are in the speech he gave at the Typothetæ's annual banquet, which is also a full statement of his thinking about unionism and the rational way to conduct business. In it, he urged his audience of employers to act more fairly toward their workers and emphasized his reasons for fearing the effects of concentration of power. He also reiterated a perhaps somewhat naive but deeply held view that labor conflicts could be settled if each party respected and truly listened to the other.

Let me review the facts:—

Prior to February 1, 1901, the minimum wage of compositors in Boston was $15 per week. A three years' agreement then entered into between your association and the Boston Typographical Union No. 13 fixed the minimum weekly wage at $16 for the first year, and $16.50 for the two succeeding years. Shortly before February 1, 1904, the Union demanded that the minimum wage be further increased to $18. You offered an increase to $17 for the first year, and $18 thereafter. The Union rejected your offer, and ordered a general strike. On February 1, 1904, the compositors went out.

No principle of trade unionism was involved, nor the question of increased wages for an indefinite period in the future. It was at most a matter of $1 a week for one year—the equivalent of what would be lost by each man in wages if the strike lasted just three weeks. To strike for such a stake was shockingly bad business. It was followed quickly by acts which also shocked the conscience.

The United Typothetæ had made a four years' contract with the In-
international Printing Pressmen and Assistants' Union. This contract provided for arbitration of grievances, provided expressly against sympathetic strikes, and recognized expressly the open shop. In defiance of this agreement and in the face of the protest of Martin P. Higgins, the President of that Union, the Boston Typographical Union No. 13 undertook, by the promise of strike benefits, which in many cases exceeded the wages the men were receiving, to induce pressmen and feeders, who had no grievance whatever, to leave your employ. That was morally wrong. We believed it to be also illegal. You applied to the Supreme Judicial Court of Massachusetts for redress, and were accorded the protection of an injunction.

This was the beginning of the end; but the end itself came in a manner even more desirable. After the strike had continued five weeks, and the men had lost twice the paltry sum for which alone they struck, Mr. Lynch, the President of the International Typographical Union, and other members of its Executive Committee, came to Boston. They investigated the facts. They doubtless realized the hopelessness of the contest. They certainly realized the wrongfulness of inducing pressmen and feeders who had no grievance to go out in defiance of their contract. The strike was declared off—unconditionally. No promise of any kind was made to the compositors, pressmen and feeders who went out. The open shop was formally declared in every office. Many of the men who went out are still without work, and the strike benefits have ceased. The dynasty which for years has governed the Boston Typographical Union with unwisdom is tottering. The secretary has already resigned. The president, it is said, will not seek re-election.

So much for the past: what shall the future be? What should you do to make it an era of peace and prosperity? The answer involves a discussion of certain broad principles which, in my opinion, should govern the relations of employer and employee in all branches of industry, though in their application they would, like every rule, be subject to exceptions more or less temporary, dependent upon the peculiar facts of the individual case.

First. Prolonged peace and prosperity can rest only upon the foundation of industrial liberty. The peace which employers should seek is not the peace of fifty years ago, when the employers were absolute masters of the situation. The peace which the employees should seek is not the peace of medieval guilds, with their numberless restrictions. Industrial liberty must attend political liberty. The lead which America takes in the industrial world is no doubt due to our unbounded resources; but of
these resources none are so great as the spirit and the ability incident to a free people. We lead the world industrially, not so much because the resources of nature are unbounded, as because the faculties and aspirations of men are comparatively unfettered. The prosperity of New England—this poor rich country—is ample evidence of this. We must have, therefore, for the development of our industries, as for the development of our citizens, the highest degree of liberty attainable. Industrial democracy should ultimately attend political democracy. Industrial absolutism is not merely impossible in this country at the present time, but is most undesirable. We must avoid industrial despotism, even though it be benevolent despotism. Our employers can no more afford to be absolute masters of their employees than they can afford to submit to the mastery of their employees, than the individual employees can afford to have their own abilities or aspirations hampered by the limitations of their fellows. Some way must be worked out by which employer and employee, each recognizing the proper sphere of the other, will each be free to work for his own and for the common good, and that the powers of the individual employee may be developed to the utmost. To attain that end, it is essential that neither should feel that he stands in the power—at the mercy—of the other. The sense of unrestricted power is just as demoralizing for the employer as it is for the employee. Neither our intelligence nor our characters can long stand the strain of unrestricted power. Every business requires for its continued health the *memento mori* of competition from without. It requires, likewise, a certain competition within, which can exist only where the ownership and management on one hand, and the employees on the other, shall each be alert, hopeful, self-respecting, and free to work out for themselves the best conceivable conditions.

*Second.* The right of labor to organize is recognized by law, and should be fully recognized by employers. There will be in most trades little probability of attaining the best conceivable conditions unless in some form a union of the employees exists. It is no answer to this proposition to point to instances of trade-union excesses and of the disasters which attended them. We believe in democracy despite the excesses of the French Revolution. Nor are claims of the trades unions disproved by pointing to the instances where the best results have been attained in businesses in which no trace of unionism existed. Wise, far-seeing employers act upon the spirit or the hint of union demands instead of waiting to have them enforced. “A word to the wise is sufficient.” The steps in advance have been taken often for the express
purpose of preventing trades-unionism from finding a lodgment, often, unconsciously, as a result merely of the enlightenment which comes with the necessary thinking that trade-union agitation compels. Such successful businesses are, indeed, the greatest triumphs of unionism; and their marked success is due in large part to the fact that they have had all the advantages of unionism without having to bear the disadvantages which, in their imperfect state, attend the unions. We must not forget the merits of unionism in our righteous indignation against certain abuses of particular unionists.

Most people admit the immense service which the labor unions have rendered to the community during the last twenty-five years in raising of wages, shortening of the hours of labor, bettering of conditions under which labor is performed, and protecting women and children from excessive or ill-timed work; but the services which the labor unions can render in the future are even greater than they have rendered in the past. The employer needs the unions "to stay him from the fall of vanity"; the employees need them for their own protection; the community needs them to raise the level of the citizen.

Strong, stable trades unions can best serve these ends. The leaders of strong unions only will adequately feel the terrible responsibility resting upon them. The leaders of stable unions only can get the experience essential to an adequate performance of their duties; and experience almost invariably makes the leaders reasonable and conservative. Only long service as a labor leader can give that knowledge of the employer's side of the controversy which is essential to its just and proper settlement. Peace and prosperity, therefore, are not to be attained by any attempt to weaken trades unions. Our hope lies rather in their growing strength and stability.

At all events, the employer, whether he wills it or not, has in most trades to reckon with the union. What shall his attitude be?

Third. Employees are entitled to be represented by union officers. A short time ago it was common for an employer not to "recognize the union." That is, although he knew a large number of his employees were members of the union, he refused to negotiate in matters relating to the employees with its officers, on the theory that the employer should deal directly and only with his employees, and may not brook the interference of an outsider. This plausible but unsound theory has yielded generally to facts and to reason. One hears little now of employers arbitrarily refusing to deal with the chosen representatives of union employees. But, of course, recognizing that union officers are the
proper representatives of the employees in any matter requiring consideration by the employer does not mean yielding to union demands, any more than recognizing a customer means conceding his demands.

How, then, shall the employer deal with the union's representative when a demand is made to which he feels he cannot accede, or when a controversy has already arisen? Many are ready with the answer: Arbitration; others again say: Conciliation. Arbitration and conciliation are each at times wise, but each involves the intercession of third parties. In arbitration it is the referee; in conciliation, the common friend. Ordinarily, neither is needed.

Fourth. Employers and employees should try to agree. A very able man, who taught the law of partnership at Harvard, once asked the class, "What shall be done if a controversy arises between partners?" The students suggested one legal remedy after another,—a receiver, an injunction, a dissolution. "No," said he, "they should try to agree." In the most important sense, employer and employee are also partners. They, too, should try to agree; and the attempt made in a properly conducted conference will generally be successful.

Nine-tenths of the serious controversies which arise in life result from misunderstanding, result from one man not knowing the facts which to the other man seem important, or otherwise failing to appreciate his point of view. A properly conducted conference involves a frank disclosure of such facts—patient, careful argument, willingness to listen and to consider. Bluff and bluster have no place there. The spirit must be, "Come, let us reason together." Such a conference is impossible where the employer clings to the archaic belief commonly expressed in the words, "This is my business, and I will run it as I please." It is impossible where the labor representative, swaggering in his power to inflict injury by strike and boycott, is seeking an unfair advantage of the employers, or would seek to maintain even a proper position by improper means. Such conferences will succeed only if employer and employee recognize that, even if there be no so-called system of profit-sharing, they are in a most important sense partners, and that each is entitled to a patient hearing, with a mind as open as the prejudice of self-interest permits.

The potent force of right reasoning in such conferences can hardly be overestimated. If applied with tact and in the aid of right action, it is almost irresistible. But it must be used only in the right spirit and in the aid of right action.
Fifth. It is necessary that the owners or the real managers of the business should themselves participate in the conferences, partly because the labor problem requires the best thought available and the most delicate treatment, and partly because the employees feel better satisfied and are apt to receive better treatment when they are dealing with the ultimate authority and not with an intermediary. Such conferences are necessarily time-consuming, but the time cannot be better spent. They are as instructive to the employer as to the employees. We must remember that there are no short cuts in evolution.

The greatest obstacle to the success of such conferences is the suspicion of the labor representatives—a suspicion due partly to ignorance of the employer's actual attitude, partly to knowledge of individual acts of unfairness of other employers, and partly also to a belief, which is frequently erroneous, that the employer will get some advantage through his supposed superior skill and ability. Suspicion yields only to experience; and for this reason, among others, the conferences are most successful when participated in by labor leaders of long standing. The more experienced the representative, the better.

But conferences, though wisely conducted and with the best of intentions on either side, do not always result in agreement. Men fail at times to see the right; and, indeed, what is right is often in doubt. For such cases arbitration affords frequently an appropriate remedy. This remedy deserves to take its place among the honorable means of settling those questions to which it properly applies. Questions arise however, which may not be arbitrated. Differences are sometimes fundamental. Demands may be made which the employer, after the fullest consideration, believes would, if yielded to, destroy the business. Such differences cannot be submitted to the decision of others. Again, the action of the union may appear to have been lawless or arbitrary, a substitution of force for law or for reason.

What, then, should be the attitude of the employer?

Sixth. Lawless or arbitrary claims of organized labor should be resisted at whatever cost. I have said that it is essential in dealing with these problems that the employer should strive only for the right. It is equally as important that he should suffer no wrong to be done unto him. The history of Anglo-Saxon and of American liberty rests upon that struggle to resist wrong—to resist it at any cost when first offered rather than to pay the penalty of ignominious surrender. It is the old story of the "ship money," of "the writs of assistance," and of "taxa-
tion without representation." The struggle for industrial liberty must follow the same lines.

If labor unions are arbitrary or lawless, it is largely because employers have ignominiously submitted to arbitrariness or lawlessness as a temporizing policy or under a mistaken belief as to their own immediate interests. You hear complaint, too, of lawless strikers in the legislature and in the city council; but, if lawlessness and corruption exist there, it is largely because the great corporations and moneyed interests have forgotten the good old maxim, "Not one cent for tribute, but millions for defence" . . .

You may compromise a matter of wages, you may compromise a matter of hours—if the margin of profit will permit. No man can say with certainty that his opinion is the right one on such a question. But you may not compromise on a question of morals, or where there is lawlessness or even arbitrariness. Industrial liberty, like civil liberty, must rest upon the solid foundation of law. Disregard the law in either, however good your motives, and you have anarchy. The plea of trades unions for immunity, be it from injunction or from liability for damages, is as fallacious as the plea of the lynchers. If lawless methods are pursued by trades unions, whether it be by violence, by intimidation, or by the more peaceful infringement of legal rights, that lawlessness must be put down at once and at any cost.

Likewise industrial liberty must rest upon reasonableness. We gain nothing by exchanging the tyranny of capital for the tyranny of labor. Arbitrary demands must be met by determined refusals, also at any cost.

In our international relations we are told that the best assurance of peace lies in preparedness for war. This is equally true in the industrial world. The union has its strike fund. The employer must also pay in some form the premium for insuring an honorable peace. He has adopted long since the guaranty fund for his credits, the depreciation fund for his machinery. He should now adopt another reserve fund to guard him against the losses attendant upon strikes, and, above all, should so organize his business as to be less vulnerable to them. Known weakness invites arbitrary attack, as opportunity makes the thief.

These are the principles by which alone the labor problem can be satisfactorily solved. They are broad, indeed; for they are the eternal principles of

LIBERTY, FRATERNITY, JUSTICE, HONOR.
This opinion, which Brandeis wrote for the Supreme Court over twenty years after his speech to the Boston Typothetae, shows that he had not changed his mind either about the basic legitimacy of unions or their obligation to act responsibly.

Mr. Justice Brandeis delivered the opinion of the Court.

Section 17 of the Court of Industrial Relations Act Laws of Kansas, 1920, while reserving to the individual employee the right to quit his employment at any time, makes it unlawful to conspire "to induce others to quit their employment for the purpose and with the intent to hinder, delay, limit or suspend the operation of" mining. Section 19 makes it a felony for an officer of a labor union willfully to use the power or influence incident to his office to induce another person to violate any provision of the Act. Dorchy was prosecuted criminally for violating 19 . . .

Some years prior to February 3, 1921, the George H. Mackie Fuel Company had operated a coal mine in Kansas. Its employees were members of District No. 14, United Mine Workers of America. On that day, Howat, as president, and Dorchy, as vice-president of the union, purporting to act under direction of its executive board, called a strike. So far as appears, there was no trade dispute. There had been no controversy between the company and the union over wages, hours or conditions of labor, over discipline or the discharge of an employee, concerning the observance of rules, or over the employment of non-union labor. Nor was the strike ordered as a sympathetic one in aid of others engaged in any such controversy. The order was made and the strike was called to compel the company to pay a claim of one Mishmash for $180. The men were told this; and they were instructed not to return to work until they should be duly advised that the claim had been paid. The strike order asserted that the claim had "been settled by the Joint Board of Miners and Operators but [that] the company refuses . . . to pay Brother Mishmash any part of the money that is due him." There was, however, no evidence that the claim had been submitted to arbitration, nor of any contract requiring that it should be. The claim was disputed. It had been pending nearly two years. So far as appears, Mishmash was not in the company's employ at the time of the strike order.
The men went out in obedience to the strike order; and they did not return to work until after the claim was paid, pursuant to an order of the Court of Industrial Relations. While the men were out on strike this criminal proceeding was begun . . .

Dorcy called this strike in violation of an injunction issued by the State court; and the particular controversy with Mishmash arose in this way. Under the contract between the company and the union, the rate of pay for employees under 19 was $3.65 a day and for those over 19 the rate was $5. Mishmash had been paid at the lower rate from August 31, 1917, to March 22, 1918, without protest. On that day he first demanded pay at the higher rate, and claimed back pay from August 31, 1917, at the higher rate. His contention was that he had been born August 31, 1898. The company paid him, currently, at the higher rate beginning April 1, 1918. It refused him the back pay, on the ground that he was in fact less than nineteen years old. One entry in the Mishmash family Bible gave August 31, 1898, as the date of his birth, another August 31, 1899. Hence the dispute. These additional facts were not put in evidence in the case at bar.

The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. To enforce payment by a strike is clearly coercion. The legislature may make such action punishable criminally, as extortion or otherwise. And it may subject to punishment him who uses the power or influence incident to his office in a union to order the strike. Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike.

"HOURS OF LABOR," 1906

In this address to the first Annual meeting of the Civic Federation of New England, Brandeis expressed his beliefs about the needs of workers if they are to participate in democracy: a work day that is not overly
long, regularity of employment, leisure, lifelong education, and development of mind and body.

Whether in a particular business at a particular time the hours of labor should be materially shortened presents usually a grave question. Such a change, owing to competition, direct or indirect, may seriously threaten the prosperity or even the life of the business; or the demand for the reduction of hours may be coupled with other terms or conditions clearly inadmissible. In such cases strenuous resistance becomes the duty of the employer. But, however commendable the resistance of the employer to a reduction of hours may be in a particular case, we should all recognize that a short working day is in general essential to the attainment of American economic, social and political ideals, and our efforts should be directed to that end.

Mr. Gompers quoted some time ago the saying of Heine that "Bread is Freedom." The ancient Greeks, recognizing that "Man cannot live by bread alone," declared that "Leisure is freedom." Undoubtedly "A full dinner pail" is a great achievement as compared with an empty one, but no people ever did or ever can attain a worthy civilization by the satisfaction merely of material needs, however high these needs are raised. The American standard of living demands not only a high minimum wage, but a high minimum of leisure, because we must meet also needs other than material ones.

The welfare of our country demands that leisure be provided for. This is not a plea for indolence. Leisure does not imply idleness. The provision for leisure does not contemplate working less hard. It means ability to work not less, but more—ability to work at something besides bread-winning—ability to work harder while working at bread-winning, and ability to work more years at bread winning. We need leisure, among other reasons, because with us every man is of the ruling class. Our education and condition of life must be such as become a ruler. Our great beneficent experiment in democracy will fail unless the people, our rulers, are developed in character and intelligence.

Now consider what, particularly in our large cities, the chance for such development is for men and women who are required regularly to work ten or even nine hours a day. A nine-hour work-day means, including the noon hour, ten hours at the factory or workshop. That means in Boston for most of those who live in the suburbs eleven or twelve hours devoted to the workshop and getting to and from it. When
you add the time necessarily spent at breakfast and supper, dressing and undressing, house work, shopping and sleep, you find that at least twenty-one of the twenty-four hours are devoted to *subsistence* and a small fraction of the day is left for *living*, even if after the long work day one is in a condition mentally and physically to really live.

To attain proper development of character, mind and body, a short working day is essential, and the eight-hour day is in most occupations and for most people not too short. For the exceptional occupation and for the exceptional man in any occupation, no general rule is required; and right thinking on this subject cannot be aided by reference to such exceptional instances. Most professions, many positions in business, and some in trades fall within the class of excepted occupations. Good work in such occupations almost necessarily brings with it joy, because it implies development of faculties and, ordinarily, pecuniary advancement. In every occupation there are such possibilities for the exceptional man. But in most industrial occupations—in the unskilled trades and in many so-called skilled trades—the limits of development and of financial success for any individual are soon reached, and consequently there is little joy in such work except as compared with the hours of idleness, or such satisfaction as comes to the needy in securing the means of subsistence.

And what is necessary to living as distinguished from subsisting?

In the first place, bodily health is necessary; that is, not merely freedom from illness, but continued physical ability to work hard. For those engaged in the more favored occupations, like the professions, and the higher positions in business and some trades, such health, including the postponement of old age, has been measurably attained by better conditions of living, and notably by outdoor recreation. What has been found necessary for continued health and working capacity for those engaged in these favored occupations we should seek to make attainable for all our citizens. The burden and waste to the community and to the individual, and the suffering attendant upon sickness and premature superannuation, may be and should be lessened by a shortening of the hours of labor so as to permit of proper out-door recreation.

In the second place, mental development is necessary. Massachusetts, recognizing the education of her citizens to be an essential condition of a free and prosperous people, has made compulsory the schooling of her children to the age of fourteen, has prohibited their working in manufacturing or mercantile establishments under the age of fourteen, and has withheld the right to vote from illiterate adults as inexo-
rably as from idiots. But the intellectual development of citizens may not be allowed to end at fourteen. With most people whose minds have really developed, the age of fourteen is rather the beginning than the end of the educational period. The educational standard required of a democracy is obviously high. The citizen should be able to comprehend among other things the many great and difficult problems of industry, commerce and finance, which with us necessarily become political questions. He must learn about men as well as things.

In this way only can the Commonwealth be saved from the pitfalls of financial schemers on the one hand or of ambitious demagogues on the other. But for the attainment of such an education, such mental development, it is essential that the education shall be continuous throughout life; and an essential condition of such continuous education is free time, that is, leisure—and leisure does not imply merely a time for rest, but free time when body and mind are sufficiently fresh to permit of mental effort. There is full justification for the common practice in trades of charging at the rate of fifty per cent additional for work in excess of the regular hours. Indeed, I doubt whether that rate of pay is not often grossly inadequate to compensate for what it takes out of the employee. An extra hour of labor may render useless those other hours which might have been devoted to development, or to the performance of other duties, or to pleasure. The excess load is wasteful with man as well as with horses or vehicles or machinery. Whether the needed education of the citizens is to be given in classes or from the political platform, in the discussion of the lodges or in the trades unions, or is to be gained from the reading of papers, periodicals, or books, freshness of mind is imperative; and to the preservation of freshness of mind a short work day is for most people essential.

Bodily and mental health and development will furthermore tend to promote innocent, rational pleasures and, in general, better habits of living. Such conditions will tend to lessen the great curse of drink, and with it some of the greatest burdens of the individual and of society.

It is, of course, no answer to the plea for a shorter work day to say that the leisure resulting from shorter hours may not be profitably employed. The art of using leisure time, like any other, must be learned; but it is certain that the proper use of leisure, as of liberty, can never be attained except by those who have the opportunity of leisure or of liberty.

Nor is it an answer to the plea for a shorter work day to say that most workingmen secure a certain amount of free time through the irregu-
larity of their work. Such free time is literally time lost. Such irregular excessive free time presents an even greater evil than that of excessive work.

Although the reduction of the hours of labor is clearly desirable, it may, as already stated, be impossible, on account of competition or other cause, to grant the reduction at a particular time in a particular business. But in my opinion employers are apt to exaggerate the resulting loss of earnings, at least in the long run. Greater freshness, better health and mental development that go with shorter hours may be relied upon within reasonable limits to make up, in many businesses at least, in part, for a shortening of working time, where the employer receives, as he should, the full co-operation of the employees to secure the largest possible production.

Obviously no limitation should be imposed upon the output of the individual, nor any rule be insisted upon by the employees which would hamper the most efficient use of machinery. Such arbitrary restrictions are wasteful and uneconomic at all times, and necessarily act as a brake on the movement towards shorter hours. The natural gain in vigor and working efficiency on the part of the employee should be allowed to show itself in the shop results. If this gain in potential efficiency is nullified by artificial limitations on what and how much a man shall do, with the facilities placed at his disposal, the decrease in working time must inevitably mean increased cost, without either economic or moral justification, and under such circumstances the employer has no other course open to him than that of resistance to any attempt to reduce the working time.

If in any case we should find that, despite the fullest co-operation of employees, the reduced working time results in immediate economic loss, the welfare of our democratic community compels us to work nevertheless for a reasonably short work day as a condition essential to the making of good citizens.

"HOW FAR HAVE WE COME ON THE ROAD TO INDUSTRIAL DEMOCRACY? — AN INTERVIEW," 1913

Brandeis's mediation in the garment workers' strike of 1910 resulted in a "protocol" that created, among other things, an elaborate conflictsolving mechanism. It also established the "preferential shop" in which union members were given preference in hiring but no one was
forced to join the union, which Brandeis thought fairer than either a union shop or a completely open hiring system. The protocol eventually collapsed but while it existed Brandeis considered it a sound experiment in employer-employee relations.

As the interview suggests, Brandeis was optimistic about the eventual outcome of the labor struggle, but he anticipated a lengthy fight. The only possible resolution was industrial democracy.

Do you think the trade unionists are justified in their uncompromising demand that the right to strike shall under no circumstances be either abridged or suspended?

They are entirely justified. Labor cannot on any terms surrender the right to strike. In [the] last resort, it is its sole effective means of protest.

You are, then, opposed to compulsory arbitration, since it involves penalizing the striker?

Absolutely.

What, now, of voluntary arbitration?

No, except in a few cases . . . The burden of the task of adjustment is shifted onto the shoulders of some alien tribunal. The result is that employer and workmen fail to get the discipline they ought to have, and they are prevented from obtaining that intimate insight into one another's needs and difficulties without which essential justice is likely to be missed.

But beyond that, the arbitrators are rather likely, from the very nature of their task, to hand down a wrong award. They may easily miss the heart of the difficulty, because they are not in the midst of the actual struggle.

What, then, have you left?

The best of all is left—strong unions and direct adjustment between employer and workmen. This is the source of the strength of the elements combined in the cloakmakers' protocol of 1910. By the terms of that agreement the employers and workmen in the garment industry have simply been forced—not by law, but by their mutual bargain—to work together. They are brought together on the boards of grievances every week, where they sit face to face with their common problems and learn to know one another. Each comes to see the other's side, to make allowances, to accommodate and compromise. Mutual understanding and forbearance, self-knowledge and discipline, tend to become realized more and more.
If, in the absence of any such voluntary working agreement . . . strikes should continue to occur . . . and the public would still be exposed to whatever inconvenience, cost, and danger might ensue! Industrial wars must still be fought, let the consequences be what they may!

We cannot hope to get on without struggle . . . In the last resort, labor will fight for its rights. It is a law of life. Must we not fight, all of us, even for the peace that we most crave?

I believe that the possibilities of human advancement are unlimited. I believe that the resources of productive enterprise are almost untouched, and that the world will see a vastly increased supply of comforts, a tremendous social surplus out of which the great masses will be apportioned a degree of well-being that is now hardly dreamed of.

But precisely because I believe in this future . . . I also believe that the race must steadily insist upon preserving its moral vigor unweakened . . . There is something better than peace, and that is the peace won by struggle.

What of the future, Mr. Brandeis! What, as you see it, is to be the outcome of the industrial struggle?

In my judgment, we are going through the following stages: We already have had industrial despotism. With the recognition of the unions, this is changing into a constitutional monarchy, with well-defined limitations placed about the employers' formerly autocratic power. Next comes profit-sharing. This, however, is to be only a transitional, half-way stage. The eventual outcome promises to be full-grown industrial democracy.

TESTIMONY BEFORE THE UNITED STATES COMMISSION ON INDUSTRIAL RELATIONS,
JANUARY 23, 1915

This is as complete and coherent a statement as exists of Brandeis's progression from labor union supporter to believer in profit sharing and to advocate of worker-participation, although it does not represent the end of his thinking about the subject and must be read in conjunction with the interview that follows.

Chairman Walsh. What is your profession, Mr. Brandeis?

Mr. Brandeis. Lawyer.

Chairman Walsh. You have also been engaged in public work, Mr. Brandeis?
Mr. Brandeis. Yes, but not in office.

Chairman Walsh. I wish you would please state the general character of the work which you have been doing, so far as it might affect industry.

Mr. Brandeis. I have, for quite a number of years, devoted myself, among other things, to a consideration of the social industrial problems, and especially the relations between employer and employee.

Chairman Walsh. Would you kindly state what your observation has been, with respect to the question as to whether or not the high concentration and the growth of [large] corporations have improved the physical conditions under which workmen are employed, or otherwise . . . Have you observed the extent to which potential control over labor conditions is concentrated in the hands of financial directors of large corporations?

Mr. Brandeis. To a certain extent . . . There has been undoubtedly great financial concentration . . . and that influence which came from the concentration in comparatively few hands of a deciding voice in important financial and industrial questions almost necessarily affects the labor problems . . . what is perhaps more important or fully as important is the fact that neither these same men nor anybody else can properly deal with these problems without a far more intimate knowledge of the facts than it is possible for men to get who undertake to have a voice in so many different businesses. They are prevented from obtaining an understanding not so much because of their point of view or motive, but because of human limitations. These men have endeavored to cover far more ground than it is possible for men to cover properly and without an intimate knowledge of the facts that they can not possibly deal with the problems involved.

Perhaps I would have to go a little further into my general feeling in this respect as to the causes of the difficulty and of the unrest.

Chairman Walsh. I wish you would please do so.

Mr. Brandeis. My observation leads me to believe that while there are many contributing causes to unrest, that there is one cause which is fundamental. That is the necessary conflict—the contrast between our political liberty and our industrial absolutism. We are as free politically, perhaps, as free as it is possible for us to be. Every male has his voice and vote; the law has endeavored to enable, and succeeded practically, in enabling him to exercise his political franchise without fear. He therefore has his part; and certainly can secure an adequate part in the Government of the country in all of its political relations; that is,
in all relations which are determined directly by legislation or governmental administration.

On the other hand, in dealing with industrial problems the position of the ordinary worker is exactly the reverse. The individual employee has no effective voice or vote. And the main objection, as I see it, to the very large corporation is, that it makes possible—and in many cases makes inevitable—the exercise of industrial absolutism . . . we have the situation of an employer so potent, so well-organized, with such concentrated forces and with such extraordinary powers of reserve and the ability to endure against strikes and other efforts of a union, that the relatively loosely organized masses of even strong unions are unable to cope with the situation . . . when a great financial power has developed . . . you have necessarily a condition of inequality between the two contending forces. Such contests, though undertaken with the best motives and with strong conviction on the part of the corporate managers that they are seeking what is for the best interests not only of the company but of the community, lead to absolutism . . . There develops within the State a state so powerful that the ordinary social and industrial forces existing are insufficient to cope with it.

I noted, Mr. Chairman, that the question you put to me concerning the employees of these large corporations related to their physical condition. Their mental condition is certainly equally important. Unrest, to my mind, never can be removed—and fortunately never can be removed—by mere improvement of the physical and material condition of the workingman. If it were possible we should run great risk of improving their material condition and reducing their manhood. We must bear in mind all the time that however much we may desire material improvement and must desire it for the comfort of the individual, that the United States is a democracy, and that we must have, above all things, men. It is the development of manhood to which any industrial and social system should be directed. We Americans are committed . . . primarily to democracy. The social justice for which we are striving is an incident of our democracy, not the main end. It is rather the result of democracy—perhaps its finest expression—but it rests upon democracy, which implies the rule by the people. And therefore the end for which we must strive is the attainment of rule by the people, and that involves industrial democracy as well as political democracy. That means that the problem of a trade should be no longer the problems of the employer alone. The problems of his business, and it is not the employer's business alone, are the problems of all in it. The union can not
shift upon the employer the responsibility for conditions, nor can the
employer insist upon determining, according to his will, the conditions
which shall exist. The problems which exist are the problems of the
trade; they are the problems of employer and employee. Profit sharing,
however liberal, can not meet the situation. That would mean merely
dividing the profits of business . . .

There must be a division not only of profits, but a division also of re­
 sponsibilities. The employees must have the opportunity of participat­
ing in the decisions as to what shall be their condition and how the
business shall be run. They must learn also in sharing that responsibil­
ity that they, too, must bear the suffering arising from grave mistakes,
just as the employer must. But the right to assist in making the deci­
sions, the right of making their own mistakes, if mistakes there must
be, is a privilege which should not be denied to labor. We must insist
upon labor sharing the responsibilities for the result of the business.

Chairman Walsh. You have probably noticed . . . the very general and
broad statements that are made by directors in these corporations . . .
to the effect that they feel that they discharge their duties when labor
policies are left to their local officials or to their executive officers here.

Mr. Brandeis. That position, so far as it may have been taken, seems
to be absolutely unsound . . . Nobody can form a judgment that is
worth having without a fairly detailed and intimate knowledge of the
facts, and the circumstances of these gentlemen, largely bankers of im­
portance, with a multitude of different associations and occupations—
the fact that those men can not know the facts is conclusive to my
mind against a system by which the same men are directors in many
different companies. I doubt whether anybody who is himself engaged
in any important business has time to be a director in more than one
large corporation . . .

Chairman Walsh. For the purposes of illustration, take a corporation
such as the Steel Corporation and explain what you mean by the de­
mocratization of industry.

Mr. Brandeis. The unit is so large that it is almost inconceivable that
the men in control can be made to realize the necessity of yielding a
part of their power to the employee.

Now, when they resist . . . the unionization of shops, and they do re­
sist it violently, most of the officials do so in absolute good faith, con­
vinced that they are doing what they ought to do . . . The possession of
almost absolute power makes them believe this. It is exactly the same
condition that presents itself often in the political world . . .
It is almost inconceivable to my mind that a corporation with powers so concentrated as the Steel Corporation could get to a point where it would be willing to treat with the employees on equal terms. And unless they treat on equal terms then there is no such thing as democratization. The treatment on equal terms with them involves not merely the making of a contract; it must develop into a continuing relation ... In order that collective bargaining should result in industrial democracy it must go further and create practically an industrial government—a relation between employer and employee where the problems as they arise from day to day, or from month to month, or from year to year, may come up for consideration and solution as they come up in our political government.

Chairman Walsh. Past experience indicates that large corporations can be trusted to bring about these reforms themselves?

Mr. Brandeis. I think all of our human experience shows that no one with absolute power can be trusted to give it up even in part ... Industrial democracy will not come by gift. It has got to be won by those who desire it. And if the situation is such that a voluntary organization like a labor union is powerless to bring about the democratization of a business, I think we have in this fact some proof that the employing organization is larger than is consistent with the public interest. I mean by larger, is more powerful, has a financial influence too great to be useful to the State; and the State must in some way come to the aid of the workingmen if democratization is to be secured.

Chairman Walsh. Do you believe that the existing State and Federal legislation is adequately and properly drawn to provide against abuses in industry, as far as the employees are concerned?

Mr. Brandeis. I have grave doubt as to how much can be accomplished by legislation, unless it be to set a limit upon the size of corporate units ... As long as there is such concentration of power no effort of the workingmen to secure democratization will be effective ... size may become such a danger in its results to the community that the community may have to set limits. A large part of our protective legislation consists of prohibiting things which we find are dangerous, according to common experience. Concentration of power has been shown to be dangerous in a democracy, even though that power may be used beneficently. For instance, on our public highways we put a limit on the size of an autotruck, no matter how well it is run. It may have the most skillful and considerate driver, but its mere size may make it something which the community can not tolerate, in view of the other
uses of the highway and the danger inherent in its occupation to so large an extent by a single vehicle.

Commissioner Lennon. Mr. Brandeis, in speaking with regard to the physical betterment that has come about in some instances in these great industries, did you mean to indicate that these physical betterments were not something of an element toward progress, toward democratic manhood?

Mr. Brandeis. They are all gains for manhood; and we recognize that manhood is what we are striving for in America. We are striving for democracy; we are striving for the development of men. It is absolutely essential in order that men may develop that they be properly fed and properly housed, and that they have proper opportunities of education and recreation. We can not reach our goal without those things. But we may have all those things and have a nation of slaves.

Commissioner Weinstock. I take it your prime remedy for industrial unrest . . . is a condition of industrial democracy? . . . I understand by industrial democracy a condition whereby the worker has a voice in the management of the industry—a voice in its affairs. Do we agree on that?

Mr. Brandeis. Yes, sir; and not only a voice but a vote; not merely a right to be heard, but a position through which labor may participate in management . . .

Commissioner Weinstock. On the other hand, Mr. Brandeis, what are the mistakes of organized labor, as you see them?

Mr. Brandeis. I think in the first place the commonest mistake is a belief that the employer is earning a tremendous amount of money at the expense of labor . . . The workingmen are mostly unfamiliar with large figures and are misled by them . . .

Now, what the employer needs most is to have proper representatives of labor understand the problems of his business . . . Put a competent representative of labor on your board of directors; make him grapple with the problems whether to do or not to do a specific thing, and undertake to balance the advantages and disadvantages presented, and he will get a realizing sense of how difficult it is to operate a business successfully . . . A few years ago, when union leaders were demanding from my client an increase in wages, and I asked them: "How much do you think the employer ought to earn before he increases your wages?" they named a figure which was far above his actual earnings, and I said to them, "Gentlemen, the books are open. If you can find either that more is being earned, or can show any way in which the employer can
earn more than he is earning, the balance shall go to you." That put the responsibilities upon the labor leaders . . . The second cause of discord is the natural distrust felt by labor due largely to their lack of knowledge and of opportunities for knowledge.

The third cause is the sense of being subject to the power of the employer. That feeling of subjection can not be removed without changing the conditions under which industry is being carried on . . .

Commissioner Weinstock. If you were an employer, on the other hand, Mr. Brandeis, and had to deal with an unreasonable union . . . what would you do?

Mr. Brandeis. If it was clear that they were unfair and unreasonable, I think the only thing to do is to resist . . . But if you have a continuing government in which these questions are being taken up from day to day and grievances are averted rather than settled, the representatives of employer and employee learn to respect each other's intelligence as well as each other's motives. There are very few difficulties which can not be adjusted by a careful discussion of the facts . . .

Commissioner Ballard. I think it would not be out of place if, perhaps, you could tell your view of the minimum wage.

Mr. Brandeis. Whether or not the minimum wage should be adopted or not would depend upon the conditions in the particular community and trade to which it applies . . . The principle is perfectly clear that you ought not to interfere with the right of contract unless society demands that you should. But the principle is equally clear that we should interfere with the right of contract so far as the conditions make it necessary in order to protect the community—present and future generations.

The condition is such in many of our industrial communities that this necessity exists. The women in industry are largely unorganized; they are largely untrained, being to a great extent in business only for a short time; the percentage of the young and inexperienced is large. In all those respects their condition differs from that of men, and the consequence of their receiving less than a decent wage is far more serious than in the case of men. It is necessary, therefore, for the protection of society that we should fix or rather create boards which can upon investigation fix a minimum wage, having due regard to the position of employers as well as of the employee. And in fixing a minimum wage, it merely sets up a prohibition designed to protect the community from social danger.
Brandeis became convinced that the solution to the problem of industrial democracy lay in cooperatives that would negate the distinction between worker and employer. By 1915, when he gave this interview to the Boston Post, he had read Beatrice Potter’s Cooperative Movement in Great Britain. He drew heavily upon it for the description of the British Co-operative Wholesale Society. In the years following, he read The Consumer’s Cooperative Movement and The Decay of Capitalist Civilization by Potter and her husband, Sidney Webb, and recommended them and their ideas to his economist daughter Elizabeth Raushenbush and to Felix Frankfurter. Brandeis became an admirer of the consumers’ cooperatives of Sweden, Denmark, and Switzerland as well and an advocate of producers’ cooperatives, cooperative banks, and credit unions. Producers’ cooperatives would tend to merge into consumers’ cooperatives, he thought, and the creation of such institutions would distribute responsibility and thereby serve as a force for democracy and individual development. His interest in Denmark’s cooperative factories and consumers’ cooperatives led him to encourage his wife and one of her sisters to publish a volume entitled Democracy in Denmark. What is today called worker management became Brandeis’s hope for the future of industry.

The question of introducing workers into the boards of directors of big corporations . . . is one that must, at present, be treated broadly.

It cannot be effected merely by introducing a certain number of workingmen into the board of directors. It must come through creating a joint management of business; that is, giving to its workers a substantial share in the responsibility of management . . .

In other words, we must have industrial democracy . . . It is, of course, difficult to effect the transition from an absolutist capitalistic system to a system of industrial democracy, but it must be worked out, and it is being worked out.

One marked example of what has been and can be done is presented by the co-operative societies, which have attained such extraordinary success in England and Scotland and many parts of Europe, and which are now developing in America.

In a democratic community we naturally long for that condition
where labor will hire capital, instead of capital hiring labor. The community should be served either by laborers who hire capital or through those co-operative enterprises, private or public, by which the community undertakes to provide itself with necessaries . . .

Fifty years of growing success of the co-operative movement in England shows what can be accomplished on these lines. It shows also to what extent the ordinary working man may develop under democratic conditions to be manager of 'Big Business.'

England's 'Big Business' is her co-operative Wholesale Society. Its annual turnover is now about $150,000,000, an amount exceeded by the sales of only a few American industries; an amount larger than the gross receipts of any American railroad except the Pennsylvania and the New York Central.

Its business is very diversified. It includes that of wholesale dealer, of manufacturer, or grower, of miner, of banker, of insurer and of carrier. It operates the biggest flour mills and the biggest shoe factory in all Great Britain. It manufactures woolen clothes, all kinds of men’s, women’s and children’s clothing, a dozen kinds of prepared foods and as many household articles. It operate creameries. It carries on every branch of the printing business. It is now buying coal lands. It has a bacon factory in Denmark and a tallow and oil factory in Australia. It grows tea in Ceylon.

And through all the purchasing done by the society runs this general principle: Go direct to the source of production whether at home or abroad . . .

Accordingly, it has buyers and warehouses in the United States, Canada, Australia, Spain, Denmark and Sweden. It owns steamers plying between continental and English ports; it has an important banking department; it insures the property and person of its members . . .

The Co-operative Wholesale Society makes it purchases and manufactures its products in order to supply 1309 local distribute co-operative societies scattered over all England . . . and it is able besides to return to the local a fair dividend on its purchase.

Now, how are the directors of this great business chosen? Not by England’s leading bankers or other notables supposed to possess unusual wisdom, but democratically, by all the people interested in the operations of the society, and the number of such persons who have directly or indirectly a voice in the selection of the directors of the English Co-operative Wholesale Society is 2,750,000, for the directors of the wholesale society are elected by vote of the delegates of the 1,899 retail soci-
"'THAT BRANDEIS APPOINTMENT.' CHORUS OF GRIEF-STRICKEN CONSERVA­TIVES: Oh, what an associate for such a pure and innocent girl! And we have tried to bring her up so carefully, too!" This cartoon was published in Puck on February 19, 1916, shortly after Brandeis's nomination to the Court was announced. (Nelson Greene in Puck, courtesy of the Library of Congress)
eties, and the delegates of the retail societies are in turn selected by the members of the local societies, that is, by the consumers, on the principle of one man, one vote, regardless of the amount of capital contributed.

Note what kind of men these industrial democrats selected to exercise executive control of their vast organizations—not all wise bankers, or their dummies, but men who have risen from the ranks of co-operation, men who by conspicuous service in the local societies have won the respect and confidence of their fellows . . .

Thirty-two directors are selected in this manner; each gives to the business his whole time and attention, and the aggregate salaries of the 32 is less than that of many a single executive in American corporations, for these directors of England's big business serve each for a salary of about $1500 a year. That shows what industrial democracy can do.

We in America must come to the co-operative idea . . . Management and labor should be one; because the principles of efficient management ought to penetrate every part of the field of labor.

HITCHMAN COAL & COKE CO. V. MITCHELL, 1917

Two years after he testified before the Commission on Industrial Relations, Brandeis was on the Supreme Court, expressing his support for the legal right of unions to organize. The case was one of many that represented attempts to destroy such successful unions as the United Mine Workers of America. Read in conjunction with the opinions that follow, this dissent that he wrote when the Court upheld an injunction against efforts at unionization shows the way he combined his support for unions with diatribes against bigness and with his opposition to courts' substituting their judgment for that of the legislatures elected by the people and presumably more familiar with their problems.

MR. JUSTICE BRANDEIS, dissenting.

The Hitchman Coal & Coke Company, plaintiff below, is the owner of a coal mine in West Virginia. John Mitchell and nine others, defendants below, were then the chief executive officers of the United Mine Workers of America and of its district and sub-district organizations having "jurisdiction" over the territory in which plaintiff's mine is sit-
Brandeis and the Supreme Court in 1916, his first year as a justice. Standing, left to right: Brandeis, Willis Van Devanter, James McReynolds, John H. Clarke. Seated: William Rufus Day, Joseph McKenna, Chief Justice Edward Douglass White, Oliver Wendell Holmes, Mahlon Pitney. (Harris and Ewing, Collection of the Supreme Court of the United States)

uated; and were sued both individually and as such officers. The mine had been "unionized" about three years prior to April 16th, 1906; and until about that date was operated as a "union" mine, under a collective agreement with a local union of the United Mine Workers of America. Then a strike was declared by the union; and a short shut-down followed. While the strike so declared was still in force, as the bill alleges, the company re-opened the mine as a closed non-union mine. Thereafter persons applying for work were required as condition of obtaining employment to agree that they would not, while in the service of the company, be a member of the union, and if they joined the union would withdraw from the company's employ.

Alleging that efforts were being made illegally to unionize its mine "without its consent," the company brought in the United States Circuit [now District] Court for the Northern District of West Virginia this suit to enjoin such efforts . . .

The fundamental prohibition of the injunction is against acts done
"for the purpose of unionizing plaintiff's mine without plaintiff's consent." Unionizing a shop does not mean inducing the employees to become members of the union. It means inducing the employer to enter into a collective agreement with the union governing the relations of the employer to the employees. Unionizing implies, therefore, at least formal consent of the employer. Both plaintiff and defendants insisted upon exercising the right to secure contracts for a closed shop. The plaintiff sought to seclude the closed non-union shop through individual agreements with employees. The defendants sought to secure the closed union shop through a collective agreement with the union. Since collective bargaining is legal, the fact that the workingmen's agreement is made not by individuals directly with the employer, but by the employees with the union and by it, on their behalf, with the employer, is of no significance in this connection. The end being lawful, defendant's efforts to unionize the mine can be illegal only if the methods or means pursued were unlawful unless indeed there is some special significance in the expression "unionizing without plaintiff's consent."

It is urged that a union agreement curtails the liberty of the operator. Every agreement curtails the liberty of those who enter into it. The test of legality is not whether an agreement curtails liberty, but whether the parties have agreed upon some thing which the law prohibits or declares otherwise to be inconsistent with the public welfare. The operator by the union agreement binds himself: (1) to employ only members of the union; (2) to negotiate with union officers instead of with employees individually the scale of wages and the hours of work; (3) to treat with the duly constituted representatives of the union to settle disputes concerning the discharge of men and other controversies arising out of the employment. These are the chief features of a "unionizing" by which the employer's liberty is curtailed. Each of them is legal. To obtain any of them or all of them men may lawfully strive and even strike. And, if the union may legally strike to obtain each of the things for which the agreement provides, why may it not strike or use equivalent economic pressure to secure an agreement to provide them?

It is also urged that defendants are seeking to "coerce" plaintiff to "unionize" its mine. But coercion, in a legal sense, is not exerted when a union merely endeavors to induce employees to join a union with the intention thereafter to order a strike unless the employer consents to unionize his shop. Such pressure is not coercion in a legal sense. The employer is free either to accept the agreement or the disad-
vantage. Indeed, the plaintiff's whole case is rested upon agreements secured under similar pressure of economic necessity or disadvantage. If it is coercion to threaten to strike unless plaintiff consents to a closed union shop, it is coercion also to threaten not to give one employment unless the applicant will consent to a closed non-union shop. The employer may sign the union agreement for fear that labor may not be otherwise obtainable; the workman may sign the individual agreement for fear that employment may not be otherwise obtainable. But such fear does not imply coercion in a legal sense.

In other words an employer, in order to effectuate the closing of his shop to union labor, may exact an agreement to that effect from his employees. The agreement itself being a lawful one, the employer may withhold from the men an economic need—employment—until they assent to make it. Likewise an agreement closing a shop to non-union labor being lawful, the union may withhold from an employer an economic need—labor—until he assents to make it. In a legal sense an agreement entered into, under such circumstances, is voluntarily entered into; and as the agreement is in itself legal, no reason appears why the general rule that a legal end may be pursued by legal means should not be applied. Or, putting it in other words, there is nothing in the character of the agreement which should make unlawful means used to attain it, which in other connections are recognized as lawful.

Sixth: Merely persuading employees to leave plaintiff's employ or others not to enter it was not unlawful.

As persuasion, considered merely as a means, is clearly legal, defendants were within their rights if, and only if, their interference with the relation of plaintiff to its employees was for justifiable cause. The purpose of interfering was confessedly in order to strengthen the union, in the belief that thereby the condition of workmen engaged in mining would be improved; the bargaining power of the individual workingman was to be strengthened by collective bargaining; and collective bargaining was to be ensured by obtaining the union agreement. It should not, at this day, be doubted that to induce workingmen to leave or not to enter an employment in order to advance such a purpose is justifiable when the workmen are not bound by contract to remain in such employment.

Seventh: There was no "threat, violence or intimidation."

The decree enjoined "threats, violence or intimidation." Such action would, of course, be unlawful though employed in a justifiable
cause. But there is no evidence that any of the defendants have resorted to such means. The propaganda among plaintiff's employees was conducted almost entirely by one man, the defendant Hughes, a District No. 6 organizer. His actions were orderly and peaceable, consisting of informal talks with the men, and a few quietly conducted public meetings, in which he argued the benefits of organization and pointed out to the men that, although the company was then paying them according to union scale, there would be nothing to prevent a later reduction of wages unless the men united. He also urged upon the men that if they lost their present jobs, membership in the union was requisite to obtaining employment in the union mines of the neighboring States. But there is no suggestion that he exceeded the moderate bounds of peaceful persuasion, and indeed, if plaintiff's witnesses are to be believed, men with whom Hughes had talked, his argument made no impression on them, and they expressed to him their satisfaction with existing conditions at the mine.

When this suit was filed no right of the plaintiff had been infringed and there was no reasonable ground to believe that any of its rights would be interfered with.

**DUPLEX COMPANY V. DEERING, 1920**

Brandeis's role as a spokesperson on the Supreme Court for unions is exemplified by this and the following opinion. He recognized that unions could not merely be supported in principle; they also had to be allowed to use the legal weapons available to them in order to combat unfair practices by employers.

**MR. JUSTICE BRANDEIS, dissenting, with whom MR. JUSTICE HOLMES and MR. JUSTICE CLARKE concur.**

The Duplex Company, a manufacturer of newspaper printing presses, seeks to enjoin officials of the machinists' and affiliated unions from interfering with its business by inducing their members not to work for plaintiff or its customers in connection with the setting up of presses made by it. Unlike *Hitchman Coal & Coke Co. v. Mitchell*, there is here no charge that defendants are inducing employees to break their contracts. Nor is it now urged that defendants threaten acts of violence. But plaintiff insists that the acts complained of violate both the com-
The defendants admit interference with plaintiff's business but justify on the following ground: There are in the United States only four manufacturers of such presses; and they are in active competition. Between 1909 and 1913 the machinists' union induced three of them to recognize and deal with the union, to grant the eight-hour day, to establish a minimum wage scale and to comply with other union requirements. The fourth, the Duplex Company, refused to recognize the union; insisted upon conducting its factory on the open shop principle; refused to introduce the eight-hour day and operated for the most part, ten hours a day; refused to establish a minimum wage scale; and disregarded other union standards. Thereupon two of the three manufacturers who had assented to union conditions, notified the union that they should be obliged to terminate their agreements with it unless their competitor, the Duplex Company, also entered into the agreement with the union, which, in giving more favorable terms to labor, imposed correspondingly greater burdens upon the employer. Because the Duplex Company refused to enter into such an agreement and in order to induce it to do so, the machinists' union declared a strike at its factory, and in aid of that strike instructed its members and the members of affiliated unions not to work on the installation of presses which plaintiff had delivered in New York . . .

First . . . Defendants' justification is that of self-interest. They have supported the strike at the employer's factory by a strike elsewhere against its product. They have injured the plaintiff, not maliciously, but in self-defense. They contend that the Duplex Company's refusal to deal with the machinists' union and to observe its standards threatened the interest not only of such union members as were its factory employees, but even more of all members of the several affiliated unions employed by plaintiff's competitors and by others whose more advanced standards the plaintiff was, in reality, attacking; and that none of the defendants and no person whom they are endeavoring to induce to refrain from working in connection with the setting up of presses made by plaintiff is an outsider, an interloper. In other words, that the contest between the company and the machinists' union involves vitally the interest of every person whose cooperation is sought. May not all with a common interest join in refusing to expend their labor upon articles whose very production constitutes an attack upon their stan-
standard of living and the institution which they are convinced supports it? Applying common-law principles the answer should, in my opinion, be: Yes, if as matter of fact those who so cooperate have a common interest.

The change in the law by which strikes once illegal and even criminal are now recognized as lawful was effected in America largely without the intervention of legislation. This reversal of a common-law rule was not due to the rejection by the courts of one principle and the adoption in its stead of another, but to a better realization of the facts of industrial life. It is conceded that, although the strike of the workmen in plaintiff's factory injured its business, the strike was not an actionable wrong, because the obvious self-interest of the strikers constituted a justification. Formerly courts held that self-interest could not be so served. But even after strikes to raise wages or reduce hours were held to be legal because of the self-interest, some courts held that there was not sufficient causal relationship between a strike to unionize a shop and the self-interest of the strikers to justify injuries inflicted. But other courts, repeating the same legal formula, found that there was justification, because they viewed the facts differently. When centralization in the control of business brought its corresponding centralization in the organization of workingmen, new facts had to be appraised. A single employer might, as in this case, threaten the standing of the whole organization and the standards of all its members, and when he did so the union, in order to protect itself, would naturally refuse to work on his materials wherever found. When such a situation was first presented to the courts, judges concluded that the intervention of the purchaser of the materials established an insulation through which the direct relationship of the employer and the workingmen did not penetrate; and the strike against the material was considered a strike against the purchaser by unaffected third parties. But other courts, with better appreciation of the facts of industry, recognized the unity of interest throughout the union, and that, in refusing to work on materials which threatened it, the union was only refusing to aid in destroying itself.

Second. As to the anti-trust laws of the United States: [the Clayton Anti-trust Act] was the fruit of unceasing agitation, which extended over more than twenty years and was designed to equalize before the law the position of workingmen and employer as industrial combatants . . .

By 1914 the ideas of the advocates of legislation had fairly crystallized
upon the manner in which the inequality and uncertainty of the law should be removed. It was to be done by expressly legalizing certain acts regardless of the effects produced by them upon other persons. In other words the Clayton Act declared that the relations between employers of labor and workingmen were competitive relations, that organized competition was not harmful and that it justified injuries necessarily inflicted in its course.

Because I have come to the conclusion that both the common law of a State and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat.

**BEDFORD CUT STONE v. JOURNEYMEN STONE CUTTERS' ASSOCIATION, 1926**

Brandeis's dissent in this case is in keeping with his opinion in Duplex v. Deering (above). The Supreme Court held that it was an unreasonable interference with interstate commerce for the stone cutters' union, spread across the country, to tell its members not to work on stone that had been cut by stone cutters who did not belong to the union. The union's act came in the context of an attempt to unionize the Bedford Cut Stone Company and twenty-three other producers of Indiana limestone. Brandeis compared the relative weakness of small journeymen's locals with the wealth and organized strength of the plaintiffs. The Sherman and Clayton Anti-trust Acts prohibited only "unreasonable" restraints of trade, and to Brandeis, if joining in a union was reasonable and legal, so was a call for union solidarity. Justices Edward T. Sanford and Harlan Fiske Stone announced themselves bound by the rule enunciated in Duplex. The other justices in the majority, however, clearly
differed with Brandeis and Holmes in their assessment—and fear—of the relative strength of laborers and employers.

MR. JUSTICE BRANDEIS, dissenting.

The constitution of the Journeymen Stone Cutters' Association provides: "'No member of this Association shall cut, carve or fit any material that has been cut by men working in opposition to this Association.'" For many years, the plaintiffs had contracts with the Association under which its members were employed at their several quarries and works. In 1921, the plaintiffs refused to renew the contracts because certain rules or conditions proposed by the Journeymen were unaccept­able.

Then came a strike. It was followed by a lockout, the organization by the plaintiffs of a so-called independent union, and the establishment of it at their plants. Repeated efforts to adjust the controversy proved futile. Finally, the Association urged its members working on buildings in other States to observe the above provision of its constitution. Its position was "that if employers will not employ our members in one place, we will decline to work for them in another, or to finish any work that has been started or partly completed by men these employers are using to combat our organization."

If, in the struggle for existence, individual workingmen may, under any circumstances, co-operate in this way for self-protection even though the interstate trade of another is thereby restrained, the lower courts were clearly right in denying the injunction sought by plaintiffs. I have no occasion to consider whether the restraint, which was applied wholly intrastate, became in its operation a direct restraint upon inter­state commerce. For it has long been settled that only unreasonable re­straints are prohibited by the Sherman Law. And the restraint imposed was, in my opinion, a reasonable one. The Act does not establish the standard of reasonableness. What is reasonable must be determined by the application of principles of the common law, as administered in federal courts unaffected by state legislation or decisions. Compare Duplex Printing Co. v. Deering. Tested by these principles, the propriety of the unions' conduct can hardly be doubted by one who believes in the organization of labor.

Neither the individual stonecutters nor the unions had any contract with any of the plaintiffs or with any of their customers. So far as concerned the plaintiffs and their customers, the individual stonecutters
were free either to work or to abstain from working on stone which had been cut at the quarries by members of the employers' union. So far as concerned the Association, the individual stonecutter was not free. He had agreed, when he became a member, that he would not work on stone "cut by men working in opposition to" the Association. It was in duty bound to urge upon its members observance of the obligation assumed. These cut stone companies, who alone are seeking relief, were its declared enemies. They were seeking to destroy it. And the danger was great.

The plaintiffs are not weak employers opposed by a mighty union. They have large financial resources. Together, they ship 70 per cent. of all the cut stone in the country. They are not isolated concerns. They had combined in a local employers' organization. And their organization is affiliated with the national employers' organization, called "International Cut Stone & Quarrymen's Association." Standing alone, each of the 150 Journeymen's locals is weak. The average number of members in a local union is only 33. The locals are widely scattered throughout the country. Strong employers could destroy a local "by importing scabs" from other cities. And many of the builders by whom the stonecutters were employed in different cities, are strong. It is only through combining the 5,000 organized stonecutters in a national union, and developing loyalty to it, that the individual stonecutter anywhere can protect his own job.

The manner in which these individual stonecutters exercised their asserted right to perform their union duty by refusing to finish stone "cut by men working in opposition to" the Association was confessedly legal. They were innocent alike of trespass and of breach of contract. They did not picket. They refrained from violence, intimidation, fraud and threats. They refrained from obstructing otherwise either the plaintiffs or their customers in attempts to secure other help. They did not plan a boycott against any of the plaintiffs or against builders who used the plaintiffs' product. On the contrary, they expressed entire willingness to cut and finish anywhere any stone quarried by any of the plaintiffs, except such stone as had been partially "cut by men working in opposition to" the Association. A large part of the plaintiffs' product consisting of blocks, slabs and sawed work was not affected by the order of the union officials. The individual stonecutter was thus clearly innocent of wrongdoing, unless it was illegal for him to agree with his fellow craftsmen to refrain from working on the "scab"-cut stone because it was an article of interstate commerce.
The manner in which the Journeymens' unions acted was also clearly legal. The combination complained of is the co-operation of persons wholly of the same craft, united in a national union, solely for self-protection. No outsider—be he quarrier, dealer, builder or laborer—was a party to the combination. No purpose was to be subserved except to promote the trade interests of members of the Journeymens' Association. There was no attempt by the unions to boycott the plaintiffs. There was no attempt to seek the aid of members of any other craft, by a sympathetic strike or otherwise. The contest was not a class struggle. It was a struggle between particular employers and their employees. But the controversy out of which it arose, related, not to specific grievances, but to fundamental matters of union policy of general application throughout the country. The national Association had the duty to determine, so far as its members were concerned, what that policy should be. It deemed the maintenance of that policy a matter of vital interest to each member of the union. The duty rested upon it to enforce its policy by all legitimate means. The Association, its locals and officers were clearly innocent of wrongdoing, unless Congress has declared that for union officials to urge members to refrain from working on stone "cut by men working in opposition" to it is necessarily illegal if thereby the interstate trade of another is restrained...

Members of the Journeymen Stone Cutters' Association could not work anywhere on stone which had been cut at the quarries by "men working in opposition" to it, without aiding and abetting the enemy. Observance by each member of the provision of their constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fellows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds of involuntary servitude. The Sherman Law was held in United States v. United States Steel Corporation, to permit capitalists to combine in a single corporation 50 per cent. of the steel industry of the United States dominating the trade through its vast resources. The Sherman Law was held in United States v. United Shoe Machinery Co., to permit capitalists to combine in another corporation practically the whole shoe machinery industry of the country, necessarily giving it a position of dominance over shoe-manufacturing in America. It would, indeed, be strange if Congress had by the same Act willed to deny to members of a small craft of workingmen the right to cooperate in simply refraining from
work, when that course was the only means of self-protection against a combination of militant and powerful employers. I cannot believe that Congress did so.

MR. JUSTICE HOLMES concurs in this opinion.