

violate public policy. The approval of these waivers by the Uniform Commercial Code should lead to a wider adoption of this liberal view.

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Constitutional Law—State Wages & Hours Act—Equal Protection of the Laws.—*Peterson v. Hagan*.¹—The Fair Labor Standards Act,² which establishes a maximum straight-time work week of forty hours for employees engaged in interstate commerce, gives to the states authority to fix a maximum straight-time work week lower than that created by the Federal Act.³ The State of Washington passed a Wages and Hours Act,⁴ covering employees in local commerce, which established an eight hour maximum work day after which overtime was to be paid, or a forty hour work week, to be selected at the option of individual employees.⁵ The State Act expressly exempted those subject to the terms of the Federal Act from coverage under the higher standards of the State Act.⁶ Respondent employers⁷ sought under the Declaratory Judgment Act of Washington⁸ to enjoin the enforcement of the State Act alleging it to be in its application to them an unconstitutional denial of the equal protection of the laws. This allegation was apparently grounded on the theory that the action of the State in failing to fully utilize the authority granted it by Congress, would force respondents who, it was stipulated, were not engaged in either the production of goods for interstate commerce or in interstate commerce itself and therefore not subject to the Federal Act, to maintain an overtime wage scale based on different standards than those provided by the Federal Act for employers engaged in interstate commerce within the State of Washington.

The Washington Supreme Court, affirmed the decision of the Superior Court, HELD: § 3 of the State Act is unconstitutional.⁹ The failure of the State legislature, under the power granted by Congress to legislate for all Washington businesses whether inter or intra state, to apply its wages and hours regulations to such employees engaged in "identical"¹⁰ businesses, separated only by the "accident of interstate commerce"¹¹ amounts to dis-

¹ 351 P.2d 127 (Wash. 1960).

² 52 Stat. 1060 (1938), 29 USC § 201 et seq. (1958), herein called the Federal Act.

³ 52 Stat. 1069 (1938), 29 USC § 218 (1958).

⁴ Wash. Rev. Code § 49.46 (Supp. 1959), herein called the State Act.

⁵ Wash. Rev. Code § 49.46.030 (Supp. 1959).

⁶ Ibid.

⁷ Ivy Peterson, doing business as Bellevue Sanatorium; Kauffman Buick Company, Inc.; Top-Hat Cafe, Inc.; David L. Reiff, doing business as Acme Personnel Service. This action is a consolidation of four separate actions below.

⁸ Wash. Rev. Code § 7.24 (Supp. 1956).

⁹ Also held unconstitutional by the Court, as an unlawful delegation of legislative power, was Wash. Rev. Code § 49.46.050. It will not be treated in the context of this note.

¹⁰ *Peterson v. Hagan*, supra note 1 at 133.

¹¹ Ibid.

criminatory legislation and denies to respondents the equal protection of the laws.

The two central theses of the decision appear at variance with accepted United States Supreme Court rulings.¹² Only if interstate commerce is an accident, in the sense that it does not furnish a reasonable basis for classification, and in addition only if a state must legislate when Congress has granted it permission to legislate, could the result be justified. The history of the Supreme Court rulings since 1824¹³ has emphasized the basic distinctions between local and interstate commerce. In granting to Congress the sole power to regulate interstate commerce, the Constitution¹⁴ itself dramatizes these distinctions. A large part of the history of commerce clause litigation is, in fact, a history of the development of the concept of interstate, as contrasted with purely local, commerce. Congress has not failed to regulate and control interstate commerce; such federal legislation as that in the instant case is based on the Constitutional directive. Congress, then, and the Constitution are the sources from which the lines of classification followed by the Washington legislature stem. It has been held that "the rule established by Congress on this subject, in and of itself, furnishes a reasonable basis for classification in a state law. . . ."¹⁵ It is clear that statutory discrimination, to be declared constitutional within the context of the Equal Protection Clause, must be reasonably related to the purposes of the Act in which it is found.¹⁶ More specifically, the Supreme Court has held that "distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the businesses involved."¹⁷ Even assuming that the Washington law as enacted could have been applied to those employers coming within the scope of the Federal Act,¹⁸ the question of legislative prerogative in police legislation still remains. The United States Supreme Court has spoken of "the well established principle that the legislature is not bound, in order to support the constitutional validity of its regulation to extend it to all cases which it might possibly reach."¹⁹ This would indicate that the right to legislate for those within the scope of the Federal Act can not be equated with a constitutional duty to so legislate.

The validity of the State Act is further demonstrated by the often

¹² *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Miller v. Wilson*, 236 U.S. 373 (1915).

¹³ *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

¹⁴ U.S. Const. art. I, § 8.

¹⁵ *Terrace v. Thompson*, *supra* note 12.

¹⁶ *Williamson v. Lee Optical Co. of Okla. Inc.*, 348 U.S. 483 (1954).

¹⁷ *Hoopeston Canning Co. v. Culten*, 318 U.S. 313 (1942).

¹⁸ The assumption referred to was accepted as basic to the argument used by the court in the instant case; the dissent (at 139) indicates grave doubt as to the propriety of such an assumption because the Federal Act uses the work-week as its standard, while the State Act follows a work-day requirement. Either position seems academic in light of *Miller v. Wilson*, and *West Coast Hotel v. Parrish*, *supra* note 12.

¹⁹ *Miller v. Wilson*, *supra* note 12, at 284, cited with approval in *West Coast Hotel v. Parrish*, *supra* note 12, at 400.

expressed attitude of the Supreme Court in allowing state legislative bodies a wide scope of discretion in the adoption of their police laws.²⁰ It is, at this time, necessary to recall that "the prohibition of the Equal Protection Clause goes no further than the invidious discrimination."²¹

The determination of the Washington legislature to follow the constitutional distinction between local and interstate commerce and its express rejection of the opportunity offered by the Federal Act to obliterate the distinction in this specific area of regulation, was not an unreasonable or arbitrary course, but was a classic state legislative action following the basic constitutional guide lines previously demonstrated as acceptable to the United States Supreme Court and was an affirmation of the right, protected by the Tenth Amendment, of a state government to legislate within an area reserved for it and, as such, beyond the reach of federal action.

The case as decided by the State Supreme Court will probably be ineffective as precedent beyond Washington. The Supreme Court of the United States adheres to the self-imposed principle that it will not review a state court judgment based upon an adequate and independent non-federal question, even though a federal question be involved and wrongly decided.²² The case relies in part upon the Equal Protection Clause of the state constitution²³ which, it seems clear, is broad enough, standing alone, to sustain the Washington Court's judgment. This is so notwithstanding the fact that the Court relied basically on Federal reports in its interpretation of this equal protection problem.

BARRY J. WALKER

Contracts—Acceptance—Rendering of Act where Promise Requested.—*Allied Steel and Conveyers, Inc. v. Ford Motor Company.*¹—Following contracts for the sale and installation of machinery executed and performed by the parties, the buyer submitted to the seller a so-called "Amendment number 2" which proposed the purchase of additional machinery to be installed by the seller on the buyer's premises. Although designated an amendment, the proposal was in effect a purchase order for a new contract substantially similar in form to the previous ones between the parties. Amendment No. 2, which provided that the acceptance of the proposal should be "executed on the acknowledgment copy," contained a printed form of a broad indemnity clause which, unlike the identical provision contained in the same form in previous purchase orders, was not marked "VOID." A further provision stated that the terms and conditions "inconsistent with the provisions herein above set forth are hereby superseded." Before the acknowledgment copy was returned to the buyer, the seller began

²⁰ *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 62, 78 (1910).

²¹ *Morey v. Dowd*, 354 U.S. 457 (1957).

²² *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935).

²³ Wash. Const. art. I, § 12.

¹ 277 F.2d 907 (8th Cir. 1960).