

In the past, however, the only regulation of surface mining on private lands has been State regulation.³

Further, mining itself, has been held not to be interstate commerce.⁴

Neither the fact that the States may and do regulate surface mining nor the fact that surface mining "when viewed separately is local"⁵ insulates this activity from the power of the Congress under the Commerce Clause.

"* * * It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attend the exercise of the police power of the states. * * *

"* * * The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make the regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." *U.S. v. Darby*, 312 U.S. 100, 114, 118 (1941).

In *U.S. v. Darby*, the Court upheld the Fair Labor Standards Act of 1938 (29 U.S.C. secs. 201-219). This Act prescribes minimum wages and maximum hours for employees engaged in commerce or the production (as defined) of goods for commerce. It makes unlawful the shipment in interstate commerce of goods produced by employees as to whom the requirements respecting hours and wages were not observed and criminal penalties are provided for violation. The Act has been given wide application. For example, the following employees have been held to be covered by the Act:

operating and maintenance employees of the owner of a loft building, space in which is rented to persons producing goods principally for interstate commerce (*Kirschbaum Co. v. Walling*, 316 U.S. 517 (1942));

members of a rotary drilling crew, engaged within a State, as employees of an independent contractor, in partially drilling oil wells, a portion of the products from which later moved in interstate commerce (*Warren-Bradshaw Co. v. Hall*, 317 U.S. 88 (1942));

a night watchman employed in a plant in which veneer was manufactured from logs and from which a substantial portion of the manufactured product was shipped in interstate commerce (*Walton v. Southern Package Corp.*, 320 U.S. 540 (1944));

employees putting in stand-by time in the auxiliary fire-fighting service of an employer engaged in interstate commerce (*Armour & Co. v. Wantock*, 323 U.S. 126 (1944));

maintenance employees of an office building which was owned and operated by a manufacturing corporation and in which 58 percent of the rental space was used for its central offices, where its production of goods for interstate commerce was administered, managed and controlled, although the goods were actually produced at plants located elsewhere (*Borden Company v. Borella*, 325 U.S. 679 (1945));

the employees of an electrical contractor, locally engaged in commercial and industrial wiring and dealing in electrical motors and generators for commercial and industrial uses, whose customers are engaged in the production of goods for interstate commerce (*Roland Co. v. Walling*, 326 U.S. 657 (1946));

employees producing road surfacing materials in Pennsylvania for use in Pennsylvania on interstate roads or by Pennsylvania customers producing goods for interstate commerce (*Allstate Construction Co. v. Durkin*, 345 U.S. 13 (1953); *Thomas v. Hempt Bros.*, 345 U.S. 19 (1953)).⁶

Moreover, the extension by the Congress of the Act in 1961 to include State employees and to cover employees of certain "enterprises" engaged in commerce

³ West Virginia in 1939 enacted the first statute regulating surface mining. In addition to West Virginia, thirteen States now have such laws: Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Montana, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia. In no instance have the courts of a State held that the legislature is powerless to regulate surface mining. See *Dufour v. Maize*, 358 Pa. 309, 56 A. 2d 675 (1948). Compare, *Northern Illinois Coal Corp. v. Medill*, 397 Ill. 98, 72 N.E. 2d 844 (1947) and *Maryland Coal & Realty Co. v. Bureau of Mines*, 193 Md. 627, 69 A. 2d 471 (1949), setting aside the statute initially passed in each State.

⁴ *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 407, 408 (1922); *Oliver Iron Co. v. Lord*, 262 U.S. 172, 178 (1923). However, in *Coronado Coal Company v. United Mine Workers*, 268 U.S. 295, 310 (1925), the Federal Anti-Trust Act was held applicable to workers in coal mines.

⁵ *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 38 (1937).

⁶ See also, *Idaho Sheet Metal Works, Inc. v. Wirtz*, 383 U.S. 190 (1966).