Under subsequent legislation, an excise was levied on interstate carriers and their employees, while by separate but parallel legislation a fund was created in the Treasury out of which pensions were paid along the lines of the original plan. The constitutionality of this scheme appears to have been taken for granted in *Railroad Retirement Board v. Duquesne Warehouse Co.*[914]

National Labor Relations Act.—The case in which the Court reduced the distinction between "direct" and "indirect" effects to the vanishing point and thereby placed Congress in the position to regulate productive industry and labor relations in these industries was *NLRB v. Jones & Laughlin Steel Corporation*.[915] Here the statute involved was the National Labor Relations Act of 1935,[916] which declared the right of workers to organize, forbade unlawful employer interference with this right, established procedures by which workers could choose exclusive bargaining representatives with which employers were required to bargain, and created a board to oversee all these processes.[917]

The Court, speaking through Chief Justice Hughes, upheld the act and found the corporation to be subject to the act. "The close

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[914] 326 U.S. 446 (1946). Indeed, in a case decided in June 1948, Justice Rutledge, speaking for a majority of the Court, listed the *Alton* case as one "foredoomed to reversal," though the formal reversal has never taken place. *See* Mandeville Island Farms v. American Crystal Sugar Co., 334 U.S. 219, 230 (1948). *Cf.* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 19 (1976).

[915] 301 U.S. 1 (1937). A major political event had intervened between this decision and those described in the preceding pages. President Roosevelt, angered at the Court's invalidation of much of his Depression program, proposed a "reorganization" of the Court by which he would have been enabled to name one new Justice for each Justice on the Court who was more than 70 years old, in the name of "judicial efficiency." The plan was defeated in the Senate, in part, perhaps, because in such cases as *Jones & Laughlin* a Court majority began to demonstrate sufficient "judicial efficiency." *See* Leuchtenberg, *The Origins of Franklin D. Roosevelt's "Court-Packing' Plan*," 1966 SUP. CT. REV. 347 (P. Kurland ed.); Mason, *Harlan Fiske Stone and FDR's Court Plan*, 61 YALE L. J. 791 (1952); 2 M. PUSEY, CHARLES EVANS HUGHES 759–765 (1951).

[916] 49 Stat. 449, as amended, 29 U.S.C. §§ 151 *et seq*.

[917] The NLRA was enacted against the backdrop of Depression, although obviously it went far beyond being a mere antidepression measure, and Congress could find precedent in railway labor legislation. In 1898, Congress passed the Erdman Act, 30 Stat. 424, which attempted to influence the unionization of railroad workers and facilitate negotiations with employers through mediation. The statute fell largely into disuse because the railroads refused to mediate. Additionally, in Adair v. United States, 208 U.S. 161 (1908), the Court struck down a section of the law outlawing "yellow-dog contracts," by which employers exacted promises of workers to quit or not to join unions as a condition of employment. The Court held the section not to be a regulation of commerce, there being no connection between an employee's membership in a union and the carrying on of interstate commerce. *Cf.* Coppage v. Kansas, 236 U.S. 1 (1915).

In Wilson v. New, 243 U.S. 332 (1917), the Court did uphold a congressional settlement of a threatened rail strike through the enactment of an eight-hour day and time-and-a-half pay for overtime for all interstate railway employees. The na-