II. THE COAL INDUSTRY

ARNOLD R. MILLER*

As president of the Mine Workers union, I am privileged to be here to speak on behalf of our membership. I came with a prepared statement, but I dislike using such things. Instead, because of my lifetime in mining and my knowledge of it, as well as my strong faith in the democratic principles of this country, I believe I can speak on behalf of our membership in a more forceful and effective manner by just telling it the way I see it.

I believe it's fair to say that, because of the lack of responsibility on the part of those who formerly led the Mine Workers, no labor union in this country was fraught with more dissension and labor problems than was ours. Again, because of my years of experience, I know what these problems are. If we hope to solve them, one of the first things we have to do is to know where we are going. I am convinced that the solution to our problems has to come about through a full understanding and awareness by those who are affected by the labor-management agreements.

When I first met with the industry representatives as president of the Mine Workers union in 1973, I said that, in my opinion, we had lived with animosity that had been cultivated for years and hardly anyone had tried to put aside that animosity. I went on to say that if we hoped to solve the labor problems in the coal industry, the people who are asked to work in the most hazardous occupation in this country must have a part in any negotiations for the collective bargaining agreements under which they are asked to work.

At our 1973 convention in Pittsburgh, we made the first major step—one that I believe is going to be very significant. We adopted rank-and-file ratification in a bargaining system that allowed the members of our organization to tell us, the negotiators, what were their most serious problems and to give us that information to take to the bargaining table. Our hope was that we could bargain an agreement that they would accept. It is a very difficult task to pull off that kind of bargaining agreement.

You must understand that I rose from the ranks to the position I now hold and that I had had no previous experience in bargaining, but I believed that what was more important than experience was the knowledge of what was needed.

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We felt that our first priority was to establish a safe work place for our members. That objective was accepted and adopted by our rank-and-file members. Also, we were plagued with a grievance and arbitration procedure that was archaic and obsolete from the first day of its existence. Although we believed that differences of opinion ought to be arbitrated, we thought that it should be done with a greater sense of fairness than was then the case.

When we sat down to negotiate an agreement, we laid 200 or more proposals on the bargaining table, all of them related to the problems we had. Certainly we were aware that we were not going to get major improvements in all areas, but we did successfully bargain an agreement that was ratified by our membership, though by a small margin.

I would like to explain briefly why the margin was small. In previous contract negotiations, we could normally expect two or three minor changes that were not difficult for anyone to explain. In the current agreement, there were 101 changes of great complexity. Thus, not only was it more difficult to explain how the new agreement addressed itself to our most serious needs, but also we were using the new system of ratification.

One of the most important parts of the current agreement is a grievance-arbitration procedure that has the potential of being fairer to the members. We believe that it is a major step forward in bringing labor peace to the coal fields for the benefit of the Mine Workers and the industry as a whole.

I think we are on the threshold of resolving our labor problems, although I know it will not be easy. I said to our membership in 1972, when I became a candidate for the presidency of the Mine Workers union, that I looked forward to five years of the hardest work I had ever been involved in. I have been through three years and four months, and I don't see an easy road ahead to the end of my term. But I hope that by that time we will have been able to bring most of our labor problems under control.

I believe that the industry itself has now become more progressive in trying to deal with labor problems. As important as solving the labor problems is the need for education, not only of our members, but of everyone in the industry, including the arbitrators, so that they will understand what the negotiators were doing when they sat at the bargaining table. There seems to be a tend-

ency on the part of everyone involved not to take the time or to put forth the effort to learn what the thinking was that led to the contract agreement.

We have initiated an educational program for our union members, and we have set up training programs to deal with safety problems. The progress we have made with a number of the industry's major operating companies has been very good so far. I think we all understand just where we are trying to get, and that is a first priority. What is left now is to find ways to reach the ultimate goals of providing a safe place for those who mine coal, of eliminating the labor problems, and of establishing good labor relations.

I would like to talk for a moment about responsibility—the responsibility of the bargaining teams on both sides of the table to resolve the minor differences in the clearest language possible. I believe that the arbitrators should resolve the major differences over contract interpretation, but that the minor differences ought to be dealt with at the mine site where they occur.

One of the first steps in setting up the new arbitration procedure was to create an arbitration review board, and we were fortunate indeed in getting your outgoing president, Rolf Valtin, to accept the position as chief of that board. I have no qualms about saying that Mr. Valtin was the man we wanted in the beginning, and I am extremely pleased that he accepted the post. I think that the structure of the arbitration review board is one that will give credibility to the grievance and arbitration procedure we have established.

I believe our membership today is more aware than ever of the importance of coal to this country, to the economy, and to our hope of establishing self-sufficiency in the energy field. Our members are more than willing to shoulder their part of the burden. I hope that some day I will be able to come back to say to the National Academy of Arbitrators that we have reached the ultimate goals—that we are working toward getting this country into a position of self-sufficiency in energy, that we are doing it in a responsible manner, and that our members have confidence in the democratic system that we have provided for them within our union.

I have a lot of respect for and confidence in our membership, and our relationship with the employers is now much better than it ever was in the past. But we no longer live in the past. If we

are going to solve the problems facing us today, we must keep up to date and current; we must realize that mistakes have been and are being made, and we must accept changes to correct them.

I firmly believe that we will make no progress in this country if we lack the courage to make decisions that may result in a minor change which, if we have the courage of our convictions, we can go back and correct at some later date. I think we should operate on that principle, and I think we are going to get there eventually. I am totally committed to our membership and to this country, and I believe we can solve our problems and get on with making the system work.

III. Labor Relations in the Coal Industry

Joseph P. Brennan*

It gives me great pleasure to be here today to talk to you about labor relations in the coal industry—particularly the arbitration procedure set forth in the National Bituminous Coal Wage Agreement.

We can consider that procedure only against the backdrop of industry development in the last quarter of the twentieth century. By 1985 coal production should double to approximately 1.2 billion tons annually. To achieve this level of production, coal capacity will have to grow at a rate of 9 percent a year—a feat that has never been accomplished in the history of mining in the United States for any prolonged period of time. In 1985 more than 70 percent of the production, at the 1.2 billion annual ton level, will come from capacity that does not exist today.

Clearly, the coal industry that is emerging is a new industry. For the first time in this century, it enjoys a degree of differential advantage that gives it an opportunity to move from a position of secondary status in our nation's energy supply/demand equation to one of clear and overwhelming primacy. The challenge before us is to take advantage of that potential by bringing into being a coal industry truly responsive to the challenges and the potentials incident to growth.

One of the major impediments to coal expansion is the labor environment. This is so for two principal reasons.

First, we are moving very rapidly to a very young work force as contrasted with the bipolar nature of the work force now characteristic of coal. The new young people coming into coal are typical of their generation—well educated, aggressive, questioning, and highly vocal. Since this work force will, by and large, lack the tempering impact of the middle-age group, dealing with them will be exceedingly difficult.

Second, coal labor relations have in the past been tinged with both hostility and distrust. Historically, coal management and labor have existed in a sort of perpetual cold war, a situation that all too often has erupted into a coal-industry phenomenon—the widespread use of the wildcat strike.

Clearly, past practices in labor relations in coal—practices that existed in an industry of stagnation and decline—are not ade-

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quate for an industry seeking unparalleled growth. Just as clearly, our past is very distinctly not our prologue.

We must reach for our future—a future in which labor relations are a positive contribution to growth. If we do not do this, if we fail to meet the challenge confronting us, we are doomed not only to relive our past, but, more important, to forgo the greatest opportunity for material progress that coal mining and coal communities have had in this century.

In order to begin to fashion an environment conducive to growth, the negotiators of the 1974 National Bituminous Coal Wage Agreement entered into a contract that can only be characterized as revolutionary. That agreement contained many innovations, many of them exceedingly expensive. Among other items, it provided for a substantial upgrading of both wage and pension levels, significantly expanded sickness and accident benefits, expanded vacation time, and a cost-of-living adjustment. Perhaps most important, the new wage agreement contained a new and unique grievance procedure that provides the opportunity for the resolution of industrial disputes in an orderly and peaceful fashion.

This new procedure was established to do certain things. First, it was to provide for the expedited treatment of especially sensitive issues, such as discharge cases. There are specific time limits contained in the contract for such cases, and, by and large, they have worked well.

Second, the contract established arbitrator panels in every district. This device was designed to make the selection of arbitrators relatively quick and more or less mechanical, so that the parties could have easy access to arbitrators. Subsequent to the contract, the joint parties agreed to rotate the panels at the Arbitration Review Board level, thus entirely removing selection from the parties involved with the grievance procedure.

Third, the parties established an Arbitration Review Board. That board is to function as a quasi supreme court, deciding major issues arising between the parties, reconciling conflicting arbitrators' decisions, and overturning panel arbitrators' decisions when such decisions are found to be either arbitrary or capricious.

In short, from the standpoint of the industry, we wanted a grievance procedure that was quick, easy to use, free of any bias based on arbitrator selection, and one that provided an appellate

step for certain cases and helped to bring about uniformity of interpretations.

At this time we have been more than a year into the new procedure, and we must ask where it is and how it has helped in bringing about a new labor relations environment in coal.

First, we do have panels operating in every UMWA district covered by the National Bituminous Coal Wage Agreement. The individual arbitrators on these panels were selected by the United Mine Workers and the Bituminous Coal Operators Association after a very careful screening process that involved not only the joint parties, but also the Federal Mediation and Conciliation Service. The panels are now functioning under guidelines set forth by the parties, and the individual arbitrators are assigned in rotation by the office of the chief arbitrator. Currently, there are more than 100 individual arbitrator positions filled by 64 arbitrators. We are now in the process of expanding the panels in almost every district because the actual work load has proven to be much more than was anticipated.

Second, the arbitration process is being used with a vengeance. From September 15, 1975, through the end of March 1976, there were 1,435 individual requests for arbitrators. This contrasts with the historical work load of between 500 to 700 cases per year under past National Bituminous Coal Wage Agreements. The pace seems to be quickening, and the pressure for arbitrators is certain to grow.

The process of arbitrator selection by the parties has been made immeasurably easier. Now, at the conclusion of Step 3, a simple phone call to the Arbitration Review Board is all that is required to secure the services of an arbitrator. The parties themselves do not know at the time of the call who their arbitrator will be, since that selection is made on a rotating basis by the office of the chief arbitrator. The arbitrator assigned is then instructed to get in touch with the parties to make whatever arrangements are necessary.

Third, we now have a functioning Arbitration Review Board. To date, the board has heard a total of 11 cases and has decided 10. By sheer coincidence, five have been decided in favor of the union's position and five in favor of management's viewpoint. At the Arbitration Review Board level, as at every other step of the grievance procedure, the anticipated work load has been grossly underestimated. We anticipated that somewhere between 30 and

40 cases a year would come before the board for review. We now have 190 cases pending, and more are coming in every day.

The Arbitration Review Board is unusual in several important respects. First, it is truly an appellate step. The function of the board is to review decisions by panel arbitrators under one or more of the criteria clearly spelled out in the National Bituminous Coal Wage Agreement of 1974. These criteria are (1) that the decision of the panel arbitrator be in conflict with one or more decisions on the same issue of contractual interpretation by other panel arbitrators; (2) that the decision involve a question of contract interpretation that has not been previously decided by the board, and which, in the opinion of the board, involves the interpretation of a substantial contractual issue; and (3) that the decision be arbitrary, capricious, or fraudulent, and, therefore, must be set aside.

Clearly, it is the intention of the parties that the Arbitration Review Board not review every arbitration decision, but rather that it be selective in determining which cases come before it and confine itself to those questions that are significant in one or more respects. It may be likened to the supreme court of the coal industry.

Second, the Arbitration Review Board is collegial in make-up. Both the union and the industry are represented, but the presentations are made by the parties at interest, not by a board member. I am not suggesting that the parties represented do not disagree; they do and they will. But clearly the intent of the parties is that the board shall function as a board, the objective being not necessarily for one party or the other to win, but rather for the system as a whole to function to achieve a labor environment geared to growth in the coal industry.

Third, the Arbitration Review Board is a tripartite board. I know that tripartite boards have been tried and that they are somewhat out of fashion today, but I believe, for several reasons, that the joint parties were wise in deciding on this structure.

First, the coal industry is unique in terms of its labor history and the way in which labor relations have been handled. It is extremely difficult for a new arbitrator, no matter how skilled, to grasp in a short period of time the nuances that exist in the day-to-day relationships between labor and management.

Second, the working conditions and the terminology of coal mining are different from those of other industries. Over the dec-

ades coal has developed a specific set of labor relations practices geared to the particular needs of the industry. It is difficult for anyone not familiar with these practices to come to grips with substantive issues without running afoul of past industry practice and terminology.

Third, the chief arbitrator is making decisions that have an impact upon the entire industry, and upon these decisions rest thousands, if not millions, of dollars. In order to ensure that these decisions are in tune with the actual reality of the work place, it was believed that both parties should have direct input to the chief arbitrator on a continuing basis.

I am very pleased with the representatives who have been picked by the union and the BCOA to work with the chief arbitrator. Each has substantial experience in both the actual mining of coal and the labor relations problems in coal at all levels. Both have been very heavily involved with the arbitration process: They have tried cases before arbitrators; they have written briefs; and they are familiar with the particular problems surrounding arbitration at the mine level. Most important, though adversaries, they are compatible; both are seeking to ensure that the overriding objectives of the parties with respect to the Arbitration Review Board are carried out even while they are at odds on the specifics of any given case. These men were selected with great care because upon them rests a very important responsibility: to ensure that the final step of the arbitration process, the appellate step, is carried out as it was intended by the parties.

This discussion now must inevitably focus upon how well the Arbitration Review Board is doing, given the mandate presented to it by the negotiators of the 1974 National Bituminous Coal Wage Agreement. Obviously, the board has been in existence for only a short period of time, and it is too early to say definitively whether it is achieving its purposes and is helping to achieve the stable environment so necessary for the expansion of coal production. However, there are certain emerging trends on which we can focus.

First, it is quite clear that the board itself has a very positive working relationship. There are disagreements among the members of the board and, from what I have heard, these disagreements can become extremely intense. However, the board members do have a mutual respect for each other, and the discussions

that take place are among people who can disagree but, at the same time, maintain their mutual respect. I think that this working relationship is probably the strongest thing that the board has going for it as it faces the monumental problems with which it will be dealing in the coming months and years.

Second, the board has heard cases and has made decisions. These decisions have been very difficult ones, involving extremely sensitive issues, such as discharges, overtime, and the payment of personal and sick-leave days. In all cases, the hearings before the board have been held on a very high plane, and the parties have conducted themselves with decorum.

As I have said, the number of decisions reached to date is 10, five in favor of the union and five in favor of management. While I do not think that we should be keeping a box score, I think it is important to note that the board's decisions have been very well reasoned. While I sometimes question the collective sanity of the board, I have never had the occasion to question its integrity.

On the other hand, there are some negative aspects of the board's operation that concern us, and to which we will have to address ourselves in the coming months.

First, a major objective of the grievance procedure, that is, speedy resolution of differences, has been hampered by the board. Cases appealed to it remain in limbo for long periods of time. Thus, there is a substantial time lag, and an appeal to and consideration of a case by the board represents a lengthening of the process rather than a shortening of it.

A second problem has to do with the board's actual deliberation. As of now, the board considers approximately two cases a week. Thus far, all cases have been heard through oral argument, obviously a long and time-consuming process and one that is not compatible with speedy resolution of arbitration cases. At some point the board is going to have to deny certiorari in cases appealed to it. In addition, oral arguments in all cases are becoming too burdensome in terms of time, and the board is going to have to decide more cases on the written record.

Both parties have established screening mechanisms in an attempt to reduce the number of cases being appealed to the board. The success of these mechanisms is not yet clear, but certainly, from our point of view, we are going to do everything possible to

ensure that cases going to the board are truly of the type and significance that a body such as the Arbitration Review Board should handle.

Finally, there is the question of the application of the board's decisions. Obviously, such decisions have industry-wide significance, even though there may be reasons why a specific decision should not necessarily be applied on an industry-wide basis. This is a problem with which we have not yet had to deal, but it is one that is emerging and that must occupy our attention.

All in all, the board represents an attempt by the parties to bring about labor stability to the coal industry. Such stability is essential because of the tremendous production demands that will be placed upon the industry over the next several decades.

We are committed to making the board and the entire grievance procedure function effectively and smoothly. That commitment is made within an overall context of bringing to the coal industry a labor relations environment that will permit us to grow. That larger commitment is one which was made by the industry negotiators in the 1974 National Bituminous Coal Wage Agreement and one that the industry is firmly committed to carry out. Thus, within the context of proper and stable labor relations, we are going to do whatever we must to make the grievance procedure work effectively. Where there are problems, we will resolve them. Where there are institutional or other roadblocks to the proper functioning of the grievance procedure, we will remove them. For we must come to the place where the labor input in coal is a positive one that can help fashion an industry geared to meeting an expanded share of America's energy needs in the last quarter of the twentieth century.