

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Law Offices of Smith, Heenan & Althen to Judge D. Randall Frye [partial] (2 pages)	Sep. 17, 1993	b(6)
002. memo	Law Offices of Smith, Heenan & Althen to Judge D. Randall Frye [partial] (1 page)	Sep. 16, 1993	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
OA/Box Number: 7349

FOLDER TITLE:

Coal Strike Violence

2013-0968-S

sb64

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Coal Strike Violence

PHOTOCOPY
PRESERVATION

Peabody Mty 8-20

Peabody Holding $\supset$ Peabody Coal
Eastern Associated Coal
Western " "

- Stopping Violence - not taking sides

UMWA vs. BCOA 155 he

Eastern Assoc $\rightarrow$ 2 of BCOA
Peabody

- Strikes since Feb 2

- 17,000 on strike - mine at a time -
many small May 1

- Penn	- Indiana
- WV	- Ohio
- VA	- Illinois
- West KY	

- 1988 - last agreement signed - dispute over provision

union view - companies hire 3 of 5 umwa

(companies $\rightarrow$ companies that synd or holding companies

union $\rightarrow$ ~~not~~ open non-union mines but hire
3/5 union - but not union mine

Issue

- Does ~~new~~ agreement pertain to parents?
- Can parents only run union mines?

Sec Labor - appointed Mediator

- William Usery
- Former Sec Labor
- 1889-90 settled Pittsden strike

Problem - Violence getting so severe,

- no replacement workers hired - union
telling people they had

Richard Trumka - UMWA Pres - Swing
thru mining country Sept 1-6

- advocated civil disobedience
- called for not one pound of coal
to be produced
- WV took this literally

- 2nd step - union circular -

BCOA proposal "patently unfair"

- 7 days a week 12 hr days - Fals-

- wage increase "only .50¢/hr" - Fals-

- giveback 6 days of vacation
(out of 4h total)

Convoy of 4 trucks grounded - Drivers beaten
- trucks destroyed

- dropping cinder blocks off trestles on trucks ^{windows}
- Guard shack set on fire - Trucks ~~stop~~

NLRB asked Court to order 10-1 injunction
in WV to stop violence
- order issued Sept 3 - ignored

NLRB about to ask Fed Court to order
injunction

- Gov of WV needs to ask
 - Someone needs to ask Governor of WV to take action to stop violence
 - Sen Rockefeller, Byrd, Ford don't want to take sides
 - already one fatality - don't want any more
-

unm - accretion, can-check, neutrality in new mines
'old contract applies to new ~~mines~~ companies

- 70-1. par unms
 - Restrictive work rules $\Rightarrow$ Union workers less productive
-

DOL mediator began last week

- ^{ask} Gov w/ to enforce law - provide enough state
Troopers
 - Fed Marshalls in place to do work
 - let Lane Kirkland & Richard Tammka know -- no
violence or
necessary
- ↓ no indictment yet of murderer of contract
employee.

UNITED MINE WORKERS OF AMERICA

TELEPHONE (204) 344-0241

ROBERT E. PHALEN
PRESIDENT

MIKE BROWNING
VICE PRESIDENT



UNITED MINE WORKERS BUILDING
1200 KANAWHA BOULEVARD, E.
POST OFFICE BOX 1010
CHARLESTON, WEST VIRGINIA 25328

MAYNARD H. DANIEL
SECRETARY-TREASURER
HOWARD L. GREEN
INTERNATIONAL EXECUTIVE BOARD

September 14, 1993

FOR YOUR INFORMATION:

THE FOLLOWING IS A LIST OF MAJOR CONCESSIONARY PROPOSALS WHICH WERE SUBMITTED BY THE BCOA LAST WEEK. I RECENTLY REPORTED THESE PROPOSALS TO THE DISTRICT 17 EXECUTIVE BOARD AT OUR REGULAR SCHEDULED MEETING OF SEPTEMBER 10, 1993.

- (1) COMBINE ALL FACE JOBS INTO ONE CLASS (AT THEIR DISCRETION COULD WORK ANYONE ANYWHERE. EFFECTUALLY WOULD DO AWAY WITH JOB BIDDING)
- (2) CONTINUOUS OPERATION. 7 DAY PRODUCTION
- (3) 12 HOUR WORK DAY, DISCRETIONARY COULD GO UP TO 12 HOURS
- (4) O.T. AFTER 40 HOURS
- (5) O.T. AND IDLE DAY ROSTERS - ONLY REMEDY - MAKE UP WORK
NO COMPENSATION
- (6) CHANGE OUT AT THE FACE
- (7) PARTIAL CREW COAL PRODUCTION (DEEP AND SURFACE)
- (8) GRADUATED VACATION DAYS (6). TAKES 18 YEARS TO EARN 6 DAYS
- (9) DELETE ENTIRELY TEMPORARY ASSIGNMENTS
- (10) ELIMINATE ALL PRIOR PRACTICES AND CUSTOMS
- (11) 7 YEAR AGREEMENT
- (12) GIVE UP TOTALLY TRANSPORTATION OF COAL
- (13) FAMILY LEAVE -- WOULD HAVE TO TAKE ALL CONTRACTUAL

FOR YOUR INFORMATION

PAGE TWO

- FIRST -- WOULD NOT ACCRUE SENIORITY WHILE ON FAMILY LEAVE
- (14) HEALTH CARE - AFTER 3 YEARS 80/20 IN NETWORK
80/40 OUTSIDE NETWORK
 - (15) L CLASSIFICATION ON SURFACE OPERATIONS
 - (16) WAGE INCREASE .50, .30, & .30 FIRST 3 YEARS - NOTHING FOR
LAST 4 YEARS, NO REOPENER, NOTHING
 - (17) 3 OUT OF 5 NEW JOBS AT NON-SIGNATORY COMPANIES OF SIGNATORY
EMPLOYERS - (SAME AS LAST CONTRACT)

UNITED MINE WORKERS OF AMERICA

TELEPHONE (204) 348-0341

ROBERT E. PHALEN
PRESIDENT

MARK BROWNING
VICE PRESIDENT



MAYNARD H. DANIEL
SECRETARY-TREASURER

HOWARD L. GREEN
INTERNATIONAL EXECUTIVE BOARD

UNITED MINE WORKERS BUILDING
1222 KANAWHA BOULEVARD, E.
POST OFFICE BOX 1010
CHARLESTON, WEST VIRGINIA 25328.

SEP 14 1993

September 14, 1993

FOR YOUR INFORMATION:

THE FOLLOWING IS A LIST OF MAJOR CONCESSIONARY PROPOSALS WHICH WERE SUBMITTED BY THE BCOA LAST WEEK. I RECENTLY REPORTED THESE PROPOSALS TO THE DISTRICT 17 EXECUTIVE BOARD AT OUR REGULAR SCHEDULED MEETING OF SEPTEMBER 10, 1993.

- (1) COMBINE ALL FACE JOBS INTO ONE CLASS (AT THEIR DISCRETION) COULD WORK ANYONE ANYWHERE. EFFECTUALLY WOULD DO AWAY WITH JOB BIDDING
- (2) CONTINUOUS OPERATION. 7 DAY PRODUCTION
- (3) 12 HOUR WORK DAY, DISCRETIONARY COULD GO UP TO 12 HOURS
- (4) O.T. AFTER 40 HOURS
- (5) O.T. AND IDLE DAY ROSTERS - ONLY REMEDY - MAKE UP WORK. NO COMPENSATION
- (6) CHANGE OUT AT THE FACE
- (7) PARTIAL CREW COAL PRODUCTION (DEEP AND SURFACE)
- (8) GRADUATED VACATION DAYS (6). TAKES 18 YEARS TO EARN 6 DAYS
- (9) DELETE ENTIRELY TEMPORARY ASSIGNMENTS
- (10) ELIMINATE ALL PRIOR PRACTICES AND CUSTOMS
- (11) 7 YEAR AGREEMENT
- (12) GIVE UP TOTALLY TRANSPORTATION OF COAL
- (13) FAMILY LEAVE -- WOULD HAVE TO TAKE ALL CONTRACTUAL

FOR YOUR INFORMATION

PAGE TWO

- FIRST -- WOULD NOT ACCRUE SENIORITY WHILE ON FAMILY LEAVE
- (14) HEALTH CARE - AFTER 3 YEARS 80/20 IN NETWORK
60/40 OUTSIDE NETWORK
 - (15) L CLASSIFICATION ON SURFACE OPERATIONS
 - (16) WAGE INCREASE .50, .30, & .30 FIRST 3 YEARS - NOTHING FOR
LAST 4 YEARS, NO REOPENER, NOTHING
 - (17) 3 OUT OF 5 NEW JOBS AT NON-SIGNATORY COMPANIES OF SIGNATORY
EMPLOYERS - (SAME AS LAST CONTRACT)

FACSIMILE OPERATOR SHEET

Please deliver the following documents to : Mr. I. E. EngelhardtMs. J. J. Hollidayorganization : PHCIfacsimile number : 202-628-1542

telephone number : _____

There are 9 pages including cover. If you experience difficulty, please call us at the following number :314 - 342 - 7619 . Facsimile No. 314 - 342 - 7614 Facsimile Operator : TerryDate 9/20/93 Time 9:30 a.m. From Chris Farrand

Message :

The information in this facsimile transmission is confidential and is being transmitted to and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, please be advised that any dissemination, distribution or copying of this transmission is strictly prohibited. If you received this facsimile in error, please advise us immediately by telephone and destroy this facsimile.

FILED

SEP 17 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT
CLARKSBURG, WV, 26011

EASTERN ASSOCIATED COAL CORP.;
PEABODY COAL COMPANY; COLONY
BAY COAL COMPANY; and MARTINKA
COAL COMPANY,

Plaintiffs,

v.

CIVIL ACTION NO. 93-111-C
(Judge Kaeley)

INTERNATIONAL UNION, UNITED
MINE WORKERS OF AMERICA,

Defendant.

ORDER

On August 26, 1993, this Court entered a temporary restraining order pursuant to the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq. By agreement of the parties, the restraining order was extended through September 16, 1993. On that date, the Court heard testimony to determine whether a preliminary injunction should issue, and also heard argument on the defendant's motion to vacate the temporary restraining order. Upon review of the testimony and arguments, the Court makes the following findings of fact and conclusions of law:

I. Facts

The Court adopts by reference and incorporates herein the facts found in the Order issued on August 26, 1993, except as modified by the testimony.

1. On August 25, 1993, the pickets at Repair King, Shinnston, West Virginia, were dispersed at approximately 2:00 p.m., when a large contingent of approximately 35 troopers employed by the West Virginia State Police lined the road to prevent the

picketers from blocking it. The state police also escorted the convoy of trucks from Repair King to Interstate 79.

2. Despite this presence of state police, the convoy was delayed by vehicles that were traveling much slower than permitted by law, by vehicles that pulled directly in front of them, and by folding chairs that were dropped onto the road from a vehicle.

3. When the convoy arrived at the mine site, the trucks were stopped for several hours in extreme weather conditions. The drivers and passengers of the lead truck were intimidated by the picketers who were threatening them and beating on the windshields.

4. The driver and passenger of the follow-up vehicle to the convoy were threatened with bodily injury and heard threats to their families. The threats were accompanied by abusive language and vulgarities.

5. Rocks and other projectiles were thrown in the direction of the trucks by unidentified persons in camouflage clothing.

6. Although 30-35 state police arrived at the mine site throughout the afternoon of August 25, 1993, the police were mere bystanders throughout the day and made no effort to disperse the picketers or to arrest anyone until Leonzie "Dutch" Morris, president of the local union, arrived and told the assembled picketers "the party's over." Then the picketers dispersed.

7. Gary Asher and Terry Osborne, International Representatives who are employed full-time by the International Union, were at the mine entrance with the picketers throughout the afternoon of August 25, 1993.

8. Coal mining at the Tygart River Mine has been slowed to the point that the company cannot produce enough coal to both fulfill its contracts and send test coal to potential customers to preserve the economic viability of the mine.

9. Without supplies, the long wall miner has been shut down on occasion, causing roof collapse into the small area between the long-wall miner and the roof shields. This material must be loaded out, causing further delays.

10. Instances of throwing of projectiles and blocking access to the mine have occurred since August 26, 1993 and continued through September 11, 1993, but no evidence was adduced that the International Union was involved.

II. Analysis

A. Defendant's Motion to Vacate

The International has moved the Court to vacate the temporary restraining order. It argues strenuously that the evidence concerning the International's ratification and authorization of the picketing activities did not rise to the level of "clear proof" required by 29 U.S.C. § 106. In its August 26th Order, the Court found that the presence of the local presidents and picket captains, who received strike benefits, was an insufficient basis on which to make a finding by clear proof that the International had authorized the illegal activity. The Court then concluded that the issuance of the Fourth Circuit Court of Appeals Contempt Adjudication against the International, with its requirement that the International assure the presence of a responsible officer at

all times and at each location of strike activity, added the needed proof of ratification to allow the findings required by Section 105.

The International now points out that a proviso at the end of the Contempt Adjudication precludes its use in these proceedings. This proviso states as follows:

PROVIDED, however, that neither this Contempt Adjudication, nor the pleadings underlying it, nor any of their terms or provisions shall constitute evidence against, or admissions by, or an estoppel against any Respondent or Additional Respondent or the Employers or any other coal industry employer, except as between the parties hereto and then only in a proceeding instituted by or against the Board or General Counsel of the Board.

In spite of the able arguments of counsel for Eastern that this language was negotiated by the parties to limit only the exposure of the International in injury and property damage cases, the Court finds that the clear language of the proviso precludes the use of the Contempt Adjudication in this proceeding.

It is therefore ORDERED that the Court's Order of August 26, 1993 is vacated in part and that the language at page 8 discussing the Contempt Adjudication is withdrawn.

For the reasons stated below, the motion to vacate is DENIED as to the other issues raised.

B. Preliminary Injunction

Initially, the Court finds that this case involves a labor dispute as that term is defined in 29 U.S.C. § 113(c) and that attempts to negotiate a settlement of that dispute are ongoing, as required by 29 U.S.C. § 102. Further, the notice and hearing

requirements of § 107 have been complied with. The Court also finds that the Union is engaged in a strike with picketing activities which are, for the most part, protected activities under 29 U.S.C. § 104. Although the Court has vacated its order as to the Contempt Adjudication, the clear proof of authorization and ratification required by 29 U.S.C. § 106 is found in the uncontroverted evidence that Gary Asher and Terry Osborne, full-time employees of the International and International Representatives, were present at the mass picketing and road blocking at the Repair King site on August 24, 1993, and could have acted in no other capacity than as agents of the International.

As found in the Court's order of August 26, 1993, illegal activity consisting of mass picketing and road blocking occurred on August 24 and 25, 1993. The testimony now reveals that projectiles were thrown at the truck drivers and that threats and vulgarities that could lead to violence were directed at them. Thus, unlawful acts have been committed and further unlawful acts have been threatened, which, as found above, were authorized and ratified by the International.

The uncontroverted evidence also shows that a continuation of these illegal activities would delay the arrival of shipments of materials needed to continue production of coal. Roof conditions that result in rock falling into the long wall miner can occur, and the company has been unable to solicit new contracts, which may result in the permanent closure of the mines. Thus, substantial and irreparable injury to the petitioner's property can occur, and

as the defendant has shown no evidence that it would incur injury if the relief is granted, the balance of harms falls obviously in favor of granting the preliminary injunction. There is no adequate remedy at law.

The Court was not apprised at the August 25th hearing as to the accurate number of State Police who were present on site at the Tygart River mine or at the Repair King facility. It now appears that the number of State Police was approximately 25 to 30 as opposed to perhaps as few as four which was the testimony on August 25th. The number of police alone, however, is not dispositive on whether the State Police were willing or able to disperse the mass pickets which the Court had previously found to be engaged in illegal activity.

The uncontroverted testimony now presented again establishes that the State Police were mere bystanders of the events at the Tygart River mine until Mr. Morris returned from court and announced, "the party is over." When the Union began to disperse the pickets, the State police entered into the scene in an active fashion and assured the dispersal of the pickets.

The Court finds from the testimony that the State Police were acting only when the picketers on their own had decided to move after being directed by Mr. Morris, and not that the State Police, under their sovereign authority, had made a decision to remove the pickets in accordance with state law. This laissez-faire policy supports the Court's earlier conclusion that the State Police are unwilling or unable to control these picketing activities.

Based on these findings of fact and conclusions of law, the Court hereby GRANTS the motion for a preliminary injunction and ORDERS as follows: that the defendant, International Union, United Mine Workers of America, and its members acting in concert in their present strike be enjoined for a period of 30 days from the entry of this order from doing or causing to be done and from instigating, encouraging, maintaining, aiding, assisting or abetting any person or persons in doing any of the following things:

1) standing or placing themselves on or about the access to the premises of Repair King near Shinnston, Harrison County, West Virginia and Tygart River mine near Fairmont, Marion County, West Virginia or in or upon any public road or highway leading thereto in such a position or in such a manner as to obstruct, hinder or prevent the free passage of vehicles or persons or free access to or ingress to or egress from the premises.

2) blocking or obstructing the roads or approaches to the premises of Repair King or Tygart River mine with vehicles or other obstruction or in any way or by any means hindering, interfering with or preventing trucks, automobiles, other vehicles or persons traveling on foot or otherwise from entering or leaving or passing freely to or from the property or premises of Repair King or Tygart River mine.

3) assaulting, attacking or injuring or threatening to assault, attack or injure the employees of Eastern Associated Coal

Company and Martinka or those of its contractors or any other persons seeking to do business with the Movants.

Nothing in this order shall be construed as enjoining or restraining any of the defendant's agents from doing, whether singly or in concert, any of the acts specified in § 4 of the Norris LaGuardia Act, 29 U.S.C. § 104.

The security bond in the amount of \$10,000 previously filed in this matter will continue. The United States Marshal is directed to post a copy of this order at the picket shack at the Tygart River mine. The Marshal is further directed to do all things necessary, at the Court's direction, to enforce this Order, together with the sheriffs and deputies of the counties encompassing the Northern District of West Virginia and the West Virginia Department of Public Safety, so as to prohibit unlawful interferences with the ingress to or egress from the operation of movants' business.

Counsel for the defendant, Charles Donnelly, is directed to accept service on behalf of Leonzie Morris, Gary Asher, Terry Osborne, Larry Knisell and Carle Tarley and to assure that each of the individuals promptly is served a copy of this order. The Clerk is directed to mail certified copies of this order to counsel of record herein.

ENTERED: September 17, 1993.

I HEREBY CERTIFY THAT THE ENCLOSED INSTRUMENT
IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED
IN MY OFFICE:
ATTEST: BY Wally Edgett
Clerk, U. S. District Court
Northern District of West Virginia

Lee Krasner
Deputy Clerk

James M. Kealey
JAMES M. KEALEY
UNITED STATES DISTRICT JUDGE

LAW OFFICES
SMITH, HEENAN & ALTHEN

ONE VALLEY SQUARE, SUITE 1110

Post Office Box 2540

CHARLESTON, WEST VIRGINIA 25329-2540

(304) 342-8960

FAX (304) 342-5701

FORREST H. ROLES

ANNA M. DAILEY

MARK A. CARTER

MARK E. HEATH

CONNIE M. GOLBERG

WASHINGTON, D. C. OFFICE

110 VERMONT AVENUE, N.W.

WASHINGTON, D. C. 20005

(202) 887-0800

FAX (202) 775-8518

SANTO DOMINGO OFFICE

RODRIGUEZ, OBJIO 12

SANTO DOMINGO, DOMINICAN REPUBLIC

(809) 685-1202

FAX (809) 686-2826

September 8, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

**VIA TELEFAX
AND OVERNIGHT
DELIVERY**

Dear Mr. Frye:

Since the NLRB obtained the Section 10(j) injunction order on September 3, 1993, there have been numerous acts by UMWA pickets in violation of that Order. Anna Dailey and I have both contacted the U.S. Marshal's Office regarding enforcement of the Court's Order and we were informed that the U.S. Marshal's Office would not take measures to enforce the Court's Order until they receive additional guidance from the Court.

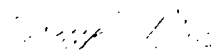
We were disappointed. In past strikes, the U.S. Marshal Service has been proactive and their efforts have been an effective deterrent to strike violence, often by their mere presence. The U.S. Marshal's involvement in monitoring compliance with the Federal Court's Order is often more effective than prospective fines and other regular contempt mechanisms, and is certainly more effective than the threat of contempt. We think the inaction may be because the authorities empowered to enforce the order do not know of its disobedience.

We are, therefore, going to send you today and as necessary regular reports of acts in contempt of the 10(j) injunction at our client operations -- Hobet Mining, Inc., Arch of West Virginia, Sharples Coal Corp., Eastern Associated Coal Corp. and Peabody Coal Company, all located within the geographic area of District 17 of the UMWA. This regular report should demonstrate the necessity of the U.S. Marshal's enforcement of the Court's Order.

D. Randall Frye, Regional Director
September 8, 1993
Page two

Since the 10(j)'s entry, the violence has, if anything, increased. Over the weekend, pickets fired shots at an occupied vehicle on Eastern Associated Coal Corp.'s property. One of the bullets hit the vehicle's window within two feet of the driver's head. As the attached report shows, without effective law enforcement in the coal fields, we fear another tragic loss of life.

Sincerely yours,


Forrest H. Roles

FHR/kf

Enclosures

cc: The Honorable Dennis R. Knapp (w/encls.)
U.S. Marshal Charles Adkins (w/encls.)
John C. Parr, Assistant U.S. Attorney (w/encls.)
Charles F. Donnelly, Esq. (w/encls.)

REPORT OF SEPTEMBER 8, 1993

EASTERN ASSOCIATED COAL CORP.

Wells Mine

During early morning hours of **September 4, 1993**, pickets using a high powered rifle shot out three transformers, one of which was used to light the main entrance, one powers the silo belt and one powered equipment in the shop. Pickets also shot at a vehicle with a driver and passenger, using what appeared to be a .22 caliber firearm. Attached are photocopy pictures of this damage. Note one of the bullet holes in the truck is within two feet of where the driver's head was located.

On **September 5, 1993**, in the early morning hours, pickets using wristrockets shot out windows at a plant office. Attached are photocopy pictures of this damage and a videotape of the pickets using wristrockets to shoot out the windows is available.

Colony Bay Mine

During day of **September 4, 1993**, pickets blocked the entrance to the mine site during the morning and then twice in the afternoon, at one point for over an hour. It wasn't until the State Police arrived that the pickets eventually moved. Attached are photocopy pictures of the pickets engaged in this blocking activity.

On **September 7, 1993**, pickets blocked the entrance to Colony Bay again for almost an hour.

PEABODY COAL COMPANY

Montcoal No. 7

On **September 7, 1993**, pickets blocked the entrance to the mine site, not letting company personnel in or out of the property for almost two hours. Pickets refused to move until after State Police arrived.

On **September 8, 1993**, pickets blocked the entrance for almost an hour in the morning and again in the mid-afternoon. As of 3:00 p.m. on September 8, 1993 pickets are still blocking the Montcoal entrance.

Big Mountain

On **September 7, 1993**, the wives of UMWA pickets blocked the mine entrance for almost 2 1/2 hours.

HOBET MINING, INC.

Hobet 07 Mine

On **September 7, 1993**, pickets ambushed a ten vehicle convoy at mine entrance, throwing rocks, beer bottles and jars. The beer bottles were filled with paint. One of the pickets assaulted a supervisor by putting his hand in his face and pushing the man's head back.

Hobet 21 Mine

On **September 7, 1993**, pickets placed nails, jackrocks, bolts and other devices in the roadway, damaging and attempting to damage the tires of vehicles crossing the picket line, including the vehicles of female office staff leaving the mine after work.

ARCH OF WEST VIRGINIA

No known incidents since the September 3 Order.

SHARPLES COAL COMPANY

No known incidents since the September 3 Order.



Wells

Transformer shot on 9/4/93.



Wells

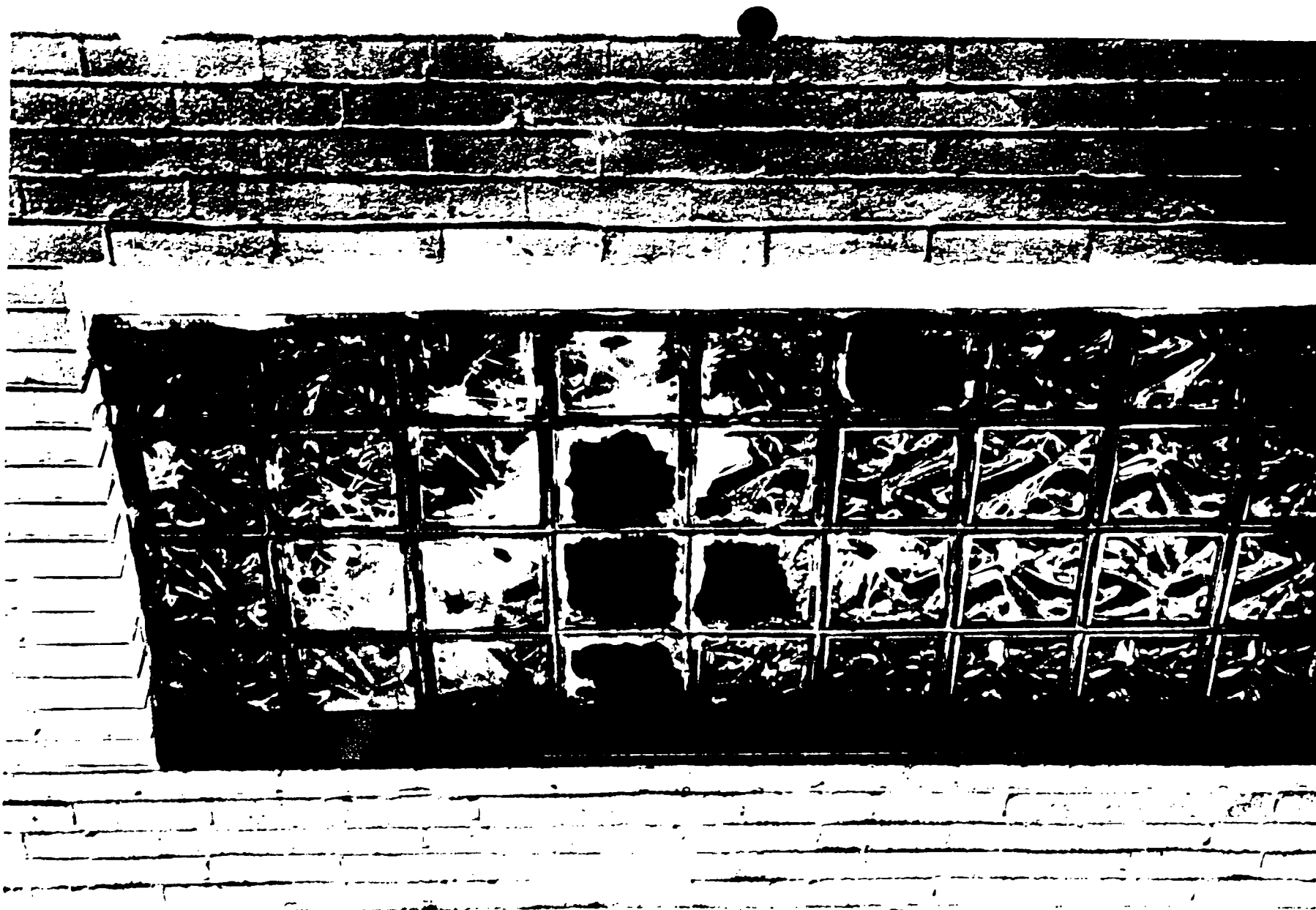
Vehicle shot at while driver and passenger on board.

Bullet holes circled.



Wells

Windows shot out with wristrockets on 9/5/93



Wells

Closeup of windows damaged by pickets using wristrockets on 9/5/93



Colony Bay

Pickets blocking mine entrance 9/4/93.



Colony Bay

Pickets blocking mine entrance 9/4/93



Colony Bay

Pickets blocking mine entrance 9/4/93.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Law Offices of Smith, Heenan & Althen to Judge D. Randall Frye [partial] (2 pages)	Sep. 17, 1993	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
OA/Box Number: 7349

FOLDER TITLE:

Coal Strike Violence

2013-0968-S

sb64

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

**LAW OFFICES
SMITH, HEENAN & ALTHEN**

ONE VALLEY SQUARE, SUITE 1380

Post Office Box 2549

CHARLESTON, WEST VIRGINIA 25329-2549

(304) 342-8960

FAX (304) 342-5791

FORREST H. ROLLS
ANNA M. BAILEY
MARK A. CARTER
MARK E. HEATH
DONNA M. COLBERG

WASHINGTON, D. C. OFFICE
1110 VERMONT AVENUE, N. W.
WASHINGTON, D. C. 20005
(202) 227-0800
FAX (202) 778-8516

SANTO DOMINGO OFFICE
R. ORTIZ, ORTIZ 12
SANTO DOMINGO, DOMINICAN REPUBLIC
(809) 693-4303
FAX (809) 693-4326

September 17, 1993

RECEIVED	
SEP 17 '93	
Peter B. Lilly	
Copies	Route
File	Shred

**VIA TELEFAX
AND OVERNIGHT
DELIVERY**

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Wold Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

Dear Mr. Frye:

The violations of the Board's 10(j) injunction continue with increased viscousness. Since my letter of September 16, the UMWA has committed the following violations:

1. EASTERN ASSOCIATED COAL CORP.

A. Montcoal

1. On September 16, 1993, at approximately 11:00 a.m., (b)(6) was driving from Twilight to Matts Creek on County Route 26 when pickets slowed him down enough so that six pickets using metal baseball bats could attack the vehicle. They did so smashing a window on the passenger's side, the windshield and mirrors. Luckily, (b)(6) escaped serious injury.

2. On September 16, 1993, at approximately 11:25 a.m., the same six pickets blocked two security guards in a company vehicle on County Route 26. Numerous pickets then attacked the vehicle but the vehicle escaped, returning to the Twilight gate after suffering damage, which included a shattered windshield, broken radiator and mirrors. Just short of 100 pickets congregated on County Route 26 between the Twilight gate and Matts Creek portal threatening additional travellers.

3. At approximately 9:30 p.m. on September 16, 1993, at the Matts Creek portal gate, 25 - 30 pickets overran the guard shack. The security guard was forced to abandon his post. The pickets ransacked the guard shack. These pickets also shot out street lights near the Matts Creek gate. The State Police were called but responded after the events.

SMITH, HEENAN & ALTHEM

D. Randall Frye, Regional Director
September 17, 1993
Page 2

4. At approximately 11:24 p.m. on September 16, 1993, the pickets cut off the power to the Twilight gate. Company spotlights were in place and were engaged. Under the cover of the darkness at approximately 12:15 a.m., on September 17, 1993, the pickets attacked a security vehicle which was stationed at the Twilight gate. The two MIS employees who were stationed inside the security vehicle were jerked out by the pickets. They were then beaten. One guard had to be taken by ambulance to the Boone Memorial Hospital. The State Police and ambulance arrived at approximately 12:45 a.m. By then, the pickets had stolen the company Bronco occupied by the beaten guards. The police have not yet recovered it.

B. Big Mountain

1. At approximately 9:06 p.m. on September 16, 1993, two security guards were blocked and stopped by two individuals dressed in camouflage. These individuals were identified as brothers with the last name (b)(6). The State Police escorted the two security guards onto the site.

2. At approximately 9:14 p.m. on September 16, 1993, shortly after the State Police left, another vehicle containing security guards attempted to enter the facility. The pickets threw so many rocks that the driver was afraid to proceed into the facility and therefore turned around.

3. At approximately 1:30 a.m. on September 17, 1993, 7 or 8 pickets attacked the guard shack. The guards in the guard shack barely escaped without injury. The pickets then ransacked the guard house.

ROBERT MINING, INC.

Mine No. 21

On the morning of September 17, 1993, beginning at 6:00 a.m., the pickets blocked the road and stopped three separate convoys attempting to enter the facility. The pickets blocked each convoy stopped for approximately 20 minutes. (b)(6) in the first convoy found jackrocks placed in the middle of the road.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 17, 1993
Page 3

ARCH OF WEST VIRGINIA

Ruffner Mine

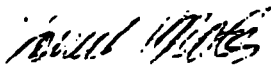
At approximately 10:45 p.m. on September 16, 1993, pickets rocked the electric sub-station security post. On four different occasions rocks struck a building housing guards at the facility. The pickets threw rocks from across the railroad tracks.

We will follow this letter with charges and affidavits. Each event described above constitutes contempt of the Board's 10(j) injunction, as each of those events coerced and intimidates employees in the exercise of their rights. Some of that intimidation threatened the lives of employees.

Two weeks has elapsed since the 10(j) order was entered. The UMWA has regularly violated it. No effective action to abate the continuing, outrageous contempt has occurred. The employees for which the order was entered urgently need here vigorous enforcement of the 10(j) injunction to protect their safety. Failure to do so risks that safety.

Unless more vigorous, speedy and effective action is taken, someone whom the Courts and the Board were constructed to protect will be seriously injured or killed. If that occurs, none of us should have to wonder whether we did what we could and should have done to protect that employee.

Very truly yours,


Forrest H. Roles

FHR/tsr

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.
David S. Smith, Esq.

**LAW OFFICES
SMITH, HEENAN & ALTHEN**

SUITE 400

1110 VERMONT AVENUE, N. W.
WASHINGTON, D. C. 20005-3593

(202) 887-0800

FAX (202) 775-8518

WILLIAM I. ALTHEN
MICHAEL T. HEENAN
DAVID S. SMITH
FORREST N. ROLES*
TIMOTHY S. MCBRIDE
RONALD E. MEISBURG
BARBARA L. KRAUSE
JOHN R. WOODRUM
GEORGE J. OLIVER
KATHRYN E. LEE
ANNA M. DAILEY
MARK A. CARTER*
LYNN M. RAUSCH
WILLIAM M. DEGRAN
MICHAEL W. FUCHNER
LARRY P. NOTHMAN*
C. GREGORY RUFFENBACH
ANN F. HAMMERSMITH
MARK E. HEATH*
SONNA M. COLBERS*

* ADMITTED IN WEST VIRGINIA
* ADMITTED IN MASSACHUSETTS
* ADMITTED IN PENNSYLVANIA

CHARLESTON OFFICE
ONE VALLEY SQUARE
SUITE 1300
CHARLESTON, WEST VA. 25301
(304) 342-8960
FAX (304) 342-8781

SANTO DOMINGO OFFICE
RODRIGUEZ OBISPO 12
SANTO DOMINGO, DOMINICAN REPUBLIC
(809) 685-4202
FAX (809) 685-4000

COUNSEL
ARTURO CALVENTI**
** ADMITTED IN DOMINICAN REPUBLIC

September 16, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

VIA TELEFAX
AND OVERNIGHT
DELIVERY

Re: Frye v. UMWA, Civil No. 2:93-0773 (10(j) Injunction)

Dear Mr. Frye:

The UMWA continues its display of open contempt of the Court's Order. Since our report of September 15, 1993, the following events have occurred.

EASTERN ASSOCIATED COAL CORP. - Big Mountain

We reported yesterday the initial threatening of security personnel after a convoy of supplier trucks entered the property. By 11:30 a.m. approximately 80 to 100 pickets had gathered at the entrance and blocked the entrance to any truck traffic with their bodies and vehicles. In addition, up to 200 pickets were along the road of Prenter Hollow. State Police informed the company that, due to the number and aggressiveness of pickets, they could not provide effective assistance to any effort by the suppliers' trucks to leave the property and that, in any event, pickets were felling trees across the road.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. memo	Law Offices of Smith, Heenan & Althen to Judge D. Randall Frye [partial] (1 page)	Sep. 16, 1993	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
OA/Box Number: 7349

FOLDER TITLE:

Coal Strike Violence

2013-0968-S

sb64

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or
financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President
and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of
personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed
of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C.
2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of
an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial
information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of
personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement
purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of
financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information
concerning wells [(b)(9) of the FOIA]

SMITH, HERMAN & ALTHEY

**D. Randall Frye, Regional Director
September 16, 1993
Page 2**

We contacted the U.S. Marshal's Office who advised us to inform the NLRB. In telephone conversations with Ms. Shore and Mr. Verst, the NLRB was informed of the situation. We were advised by Mr. Murphy shortly after 2:00 p.m. that the Court had been contacted and that Marshals were being sent. The suppliers remained trapped on the property while assistance of authorities was awaited. The Marshals arrived at the property at approximately 4:15 p.m. After speaking with the pickets, the Marshals waved for the trucks to leave the property.

Relying upon the Court's Order and the presence and directions of the Marshals, the supply trucks left the property. The trucks were preceded by pickets moving at a very slow speed. After the trucks had gone approximately one-half mile the Marshals left the area even though no State Police were in the area and numerous pickets remained at the site and along the roads. Upon the departure of the Marshals the convoy was stopped and besieged by pickets. Truck windows were destroyed by pickets wielding axe handles; numerous rocks were thrown; a diesel fuel truck was rammed and its diesel lines were cut; pickets attempted to set fire to that truck and to other trucks; and the driver of a Bronco at the rear of the convoy was forced from his vehicle which was then destroyed.

COLONY BAY COAL COMPANY

At approximately 9:30 p.m. on September 15, 1993, a total of seven individuals four of whom were armed with guns invaded a security shack at Colony Bay Coal Company. The individuals were wearing masks or scarfs across their faces. However, at one point a scarf slipped on one individual and one of the two security persons thinks he recognized that person as (b)(6) the son of a striking miner.

The gunmen told the security persons to leave the shack. When one of the security persons started to take his camera, a picket told him to put it down. The security person at first refused but the gunmen then pointed their guns directly at both security persons and said that the camera had to be left behind. The security persons then left the shack and went farther onto company property.

Shortly thereafter, approximately eleven shots were heard from the area of the security shack which had been seized. Shots were fired through the shack and a light plant.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 16, 1993
Page 3

Company personnel did not return to the security shack until about 10:30 p.m. when the State Police arrived. The expensive camera had been stolen and windows had been broken

SUMMARY

An immediate, vigorous contempt proceeding is desperately necessary. Even prior to the destruction of the convoy, the suppliers were imprisoned on company property for more than five hours while we followed the cumbersome routine of calls from the company, to the attorneys, to the NLRB, to the Court, to the Marshals followed by travel by the Marshals. Moreover, when the Marshals left the trucks after they had barely cleared the exit, the life threatening assault on the convoy occurred. This incident presented a clear and present danger of serious bodily injury or death to drivers of suppliers' trucks. It has taken place in the face of the referenced Order and the Fourth Circuit's Contempt Adjudication requiring the UMWA not only to have picket captains present but also to police the picket lines and investigate and punish misconduct. The UMWA will not obey the Fourth Circuit by punishing pickets because the UMWA pickets are acting pursuant to the control and direction of the UMWA in undertaking the violent and contemptuous actions that are now occurring.

Very truly yours,



William I. Althen

WIA/tsr

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.
David S. Smith, Esq.

LAW OFFICES
SMITH, HEENAN & ALTHEN

ONE VALLEY SQUARE, SUITE 1380

Post Office Box 2549

CHARLESTON, WEST VIRGINIA 25329-2549

(304) 342-8980

FAX (304) 342-5781

WASHINGTON, D. C. OFFICE

1110 VERMONT AVENUE, N. W.

WASHINGTON, D. C. 20005

(202) 587-0800

FAX (202) 775-8518

SANTO DOMINGO OFFICE

RODRIGUEZ, ORJIO 12

SANTO DOMINGO, DOMINICAN REPUBLIC

(809) 685-4202

FAX (809) 586-1826

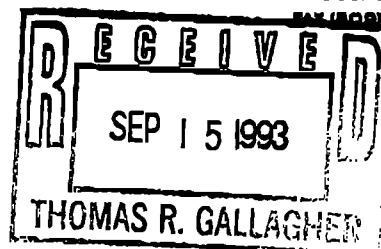
FORREST M. ROLES

ANNA M. DAILEY

MARK A. CARTER

MARK E. HEATH

DONNA M. COLBERG



September 15, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

VIA TELEFAX
AND OVERNIGHT
DELIVERY

Dear Mr. Frye:

This morning brought no more compliance with the 10(j) order than before. Your office's immediate response to this lawless breach of the Court's order is both appreciated and anxiously awaited by hundreds of people, including many who have Section 7 rights themselves that are being routinely violated by the UMWA. Set forth below is the status of events since our letter to you on September 14, 1993.

COLONY BAY COAL COMPANY

1. At about 6:30 p.m. on September 14, 1993, approximately 30 UMWA members blocked the main gate for roughly 30 minutes. A warehouse manager's truck was surrounded by pickets, who kicked it and scratched it with a sharp object along the side and tailgate. The truck was carrying boxes of parts and tires. The UMWA pickets took the tires out of the back of the truck and threw them into the nearby creek. State Troopers were in the vicinity of the main entrance and did nothing to stop this activity.

SMITH, HEENAN & ALTHEN

**D. Randall Frye, Regional Director
September 15, 1993
Page 2**

2. Around 6:45 p.m., after the State Police had left, UMWA pickets went to the railroad trestle that runs overhead of the mine property, around 50 feet from the security building and threw rocks at security personnel and the building for 5 - 10 minutes.

3. Around 8:25 p.m., the power was suspiciously disconnected to the mine and 30 minutes later, around 10 pickets charged the main gate, throwing rocks and shaking the gate. Rock throwing was so intense, security personnel had to retreat from the security building to a safer location.

4. At 9:10 p.m., eight shots were fired at a portable light plant that had been set up. Mine personnel found bullet holes in the lexan, used to protect the lights.

5. At 10:35 p.m., three UMWA pickets set up a pallet against the main gate and attempted, unsuccessfully, to climb over the gate.

6. On September 15, 1993 around 7:30 a.m., approximately 30 UMWA pickets blocked the mine entrance for 45 minutes, preventing the mine foremen from reporting to work. When the State Police finally arrived, the pickets moved, but mine foremen had to pick up ten jackrocks in their path in order to enter without tire damage. UMWA pickets then re-erected a mine curtain across the entrance to the mine, a curtain that the pickets use regularly to block the road whenever State Troopers are not present.

EASTERN ASSOCIATED COAL CORP.

A. Wells Complex

1. Around 9:40 p.m. on September 14, 1993, three pickets threw glass bottles with paint in them, at the windows of the security building vandalizing the property and attempting to block the view of the security personnel with splattered paint.

2. On September 15, 1993, around 6:25 a.m., 10 - 12 pickets blocked the front gates to the mine and 5 - 6 pickets each blocked the side gates, preventing mine foremen from gaining access at these gates.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 15, 1993
Page 3

B. Big Mountain

On September 15, 1993, a convoy of trucks delivering supplies entered the Big Mountain facility. There were numerous State Troopers in the area and the convoy entered without incident. Once the State Police departed, the UMWA pickets started to threaten security personnel and at least one picket threatened to kill one of the security guards. The convoy has not yet attempted to leave the mine site.

PEABODY COAL COMPANY

A. Montcoal No. 7

On September 15, 1993 at around 6:00 a.m., pickets began blocking the entrance to the mine off of Route 3, preventing persons from entering or leaving the property at shift change around 6:30 a.m. State Police finally arrived at 7:00 a.m. and got the road unblocked for the mine foremen to enter.

B. Twilight Mine

On September 14, 1993, around 9:05 p.m., UMWA pickets set off what appeared to be M-80 firecrackers or smoke bombs. Someone had cut the telephone lines to the Twilight mine an hour earlier.

HOBET MINING, INC.

Hobet No. 21

On September 15, 1993, UMWA pickets blocked foremen for periods of a few minutes. Later, when office personnel arrived to enter the mine, pickets blocked them for periods of 5 - 10 minutes in some cases and to an hour in the more severe cases. While stopped and blocked, 3 - 4 persons had the body paint of their vehicles scratched by pickets using sharp objects.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 15, 1993
Page 4

CONCLUSION

Needless to say, the sooner the Board acts, the more likely there will be effective enforcement of the 10(j) order and we look forward to the Board's swift action.

Sincerely yours,


Anna M. Dailey

AMD/kda

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.
David S. Smith, Esq.

LAW OFFICES
SMITH, HEENAN & ALTHEN

ONE VALLEY SQUARE, SUITE 1380

Post Office Box 2549

CHARLESTON, WEST VIRGINIA 25329-2549

(304) 342-8960

FAX (304) 342-5761

FORREST M. ROGLES

ANNA M. GALEY

MARK A. CARTER

MARK E. HEATH

DONNA M. COLBERG

WASHINGTON, D.C. OFFICE

1110 VERMONT AVENUE, N.W.

WASHINGTON, D.C. 20005

(202) 687-0800

FAX (202) 775-8516

SANTO DOMINGO OFFICE

RODRIGUEZ, CENJO 12

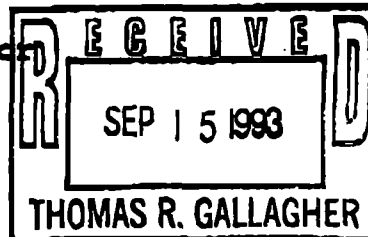
SANTO DOMINGO, DOMINICAN REPUBLIC

(809) 685-1203

FAX (809) 686-2826

September 14, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271



VIA TELEFAX
AND OVERNIGHT
DELIVERY

Dear Mr. Frye:

Since the 10(j) order was entered on September 3, it has been honored solely in its breach. The violations continue unabated. They continue to grow more dangerous. Since my letter of September 13, 1993, the UMWA has committed the following violations:

1. EASTERN ASSOCIATED COAL CORP.

A. Colony Bay

1. At about 7:15 p.m. on September 13, 1993, three guards were patrolling in the area of the railroad trestle from which the railroad ties had been thrown previously. They noticed a pile of railroad ties and other projectiles placed there by the pickets to be thrown on employees travelling under the trestle. They began to clean them up so that they would not be available for throwing at the employees working there. Seven pickets, led by Frank Prue, came out of the woods nearby and confronted them. Prue instructed the guards to get off of the railroad right-of-way claiming the pickets had a superior right to it. The guards left the railroad right-of-way, but remained in the area observing the pickets. At that point, the seven or so pickets jumped the three guards and a general melee occurred. No weapons other than fists and fingernails were used. Outnumbered two to one, the guards badly lost the fight, but suffered no serious or lasting injuries other than cuts, abrasions, bruises and a possible broken nose.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 14, 1993
Page 2

2. At about 8:00 p.m. on September 13, 1993, pickets from the picket shack began bombarding the guard shack with rocks. State Police called incident to the fight arrived and the bombardment stopped. However, after being there a short time, the State Police left and the fifty or so pickets rushed the guard shack from the picket line. The guards who were in the guard shack barely managed to get out and escaped to the mine property by a hairbreadth. The pickets destroyed the guard shack with rocks and ax handles. They broke out the windows, including the lexan, stole the base radio and broke up the furniture.

3. From 9:00 a.m. to 10:15 a.m. on September 14, 1993, the UMWA blocked the entrance and exits to the mine. Pickets remain blocking the roads until the West Virginia State Police broke up the blockage.

4. Also, from 11:00 a.m. or so until 1:00 p.m., the pickets, along with some family members, again blocked the road. The blockage continued until about 1:00 p.m. when the police returned.

B. Wells Complex

1. At about 11:15 p.m. on September 13, 1993, pickets began throwing homemade explosive devices from the picket line towards the guard shack. These devices are made of 1/2 inch PCV pipe, filled with gun powder. The pickets would light their fuse and throw them towards the guard shack, where most of them exploded. Luckily, and only by luck, no one was seriously injured.

2. Shortly after 11:00 p.m. on September 13, 1993, unidentified pickets from near the picket shack fired six shots into the main transformer, seriously damaging it. The unidentified pickets also fired numerous shots at the lights illuminating the area. They hit five bulbs, destroying them.

3. Beginning at about 5:00 a.m. on September 14, 1993, women and children from the pickets' families assembled before the Wells Complex, blocking ingress and egress to it by obstructing the road leading to the Complex. They acted with regular pickets, totalling approximately 30. The entrances and exits of the operation continue to be blocked at the time this letter was prepared.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 14, 1993
Page 3

C. Montcoal No. 7

1. At about 7:00 p.m. on September 13, pickets from the sides of the road threw paint bombs, rocks and what appeared to be a brick against two vehicles leaving and one coming to the Twilight operation. All three vehicles sustained damage to their exterior. The paint so obstructed the vision of Richard Coleman, who was driving one of the vehicles, that he had to stop to clean it off. When he did, a number of pickets emerged from the woods and threatened him.

2. At about 5:00 p.m., pickets shot the vehicle driven by Mark Skiles as it traveled the same road with a pellet gun denting the side and breaking the right rear window. At about the same time and location, a picket fired a wristrocket breaking the right rear window of Toney Basko's Bronco.

2. HOBET MINING, INC.

Hobet No. 21

1. Beginning at about 5:00 a.m., when salaried employees were scheduled to go to work, a large number of striking UMWA members and family members gathered at the entrance of the Hobet No. 21 mine, blocking it. Representatives of the Marshal Service persuaded the pickets and their families to let the salaried employees pass through the picket line into the mine. As the vehicles were driven through the line by salaried employees, pickets and members of their families used sharp instruments to scrap and scratch the sides of the salaried employees' personal vehicles, seriously marring the paint job on five of those vehicles.

2. At about 7:45 a.m., after the Marshals had left, the pickets and their families again stood in and obstructed the road leading into the Hobet No. 21 mine. They prevented the office personnel scheduled to begin work at 8:00 a.m. from coming in. The State Police were called and after some time they managed to get the office personnel through the picket line.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 14, 1993
Page 4

3. GENERAL

The Court's September 3, 1993 10(j) injunction order contained a provision requiring the UMWA to notify its members of the terms of the order. It reads as follows:

2. That respondents International Union, United Mine Workers of America, District 17, United Mine Workers of America, Local Unions 1302, 2286, 5817 and 5958, United Mine Workers of America, their officers, representatives, agents, servants, employees and all members and persons acting in concert or participation with them:

(a) Provide, at the picket line, to each of their members engaged in picketing at the jobsites of the charging parties and within the territorial jurisdiction of respondents District 17, and mail to each of their officers, representatives, agents, servants and employees, a copy of the Court's opinion and order and a clear written directive to refrain from engaging in any of the picket line misconduct enjoined by this Court, or any similar conduct.

(b) Post in their business offices and all local meeting halls within the jurisdiction of respondent District 17 the Court's opinion and order herein.

(c) Provide to this Court, together with copies submitted to the petitioner, within ten (10) days of the issuance of this order, sworn affidavits describing with specificity what steps respondents have taken to comply with the affirmative terms of this order, including proof of service of said document.

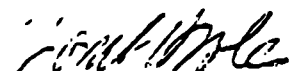
As of 5:00 p.m. on September 13, 1993, the UMWA had filed nothing in the Clerk's office. So far as all of the charging parties are informed, the UMWA has taken no action to notify its striking members and authorized pickets of the order or its terms, and have taken no action to see to its obedience.

SMITH, HEENAN & ALTHEN

D. Randall Frye, Regional Director
September 14, 1993
Page 5

The UMWA continues to make a mockery of the law and Board procedure. Four months of violence by the Union, including millions of dollars in damage to coal mining property, hundreds of thousands of dollars in damage to the property of individuals of the companies seeking to work, numerous serious injuries and one murder, preceded the Board's seeking and obtaining this injunction. We hoped the injunction would make a difference. It has not. The damage to property, the assaults and threats to individuals, and most importantly, the assaults and the shootings, which so seriously threatens life, continue. Nothing effective is being done to stop it. We, again, urge immediate and effective action to stop the outrageous coercion and intimidation of employees in the exercise of their rights before the UMWA kills someone else.

Very truly yours,


Forrest H. Roles

FHR/kda

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.

LAW OFFICES
SMITH, HEENAN & ALTHEN

ONE VALLEY SQUARE, SUITE 1380

Post Office Box 2549

CHARLESTON, WEST VIRGINIA 25329-2549

(304) 342-8980

FAX (304) 342-5761

FORREST H. MOLES
ANNA M. DAILEY
MARK A. CARTER
MARK E. NEATH
DONNA M. COLBERG

WASHINGTON, D. C. OFFICE
1110 VERMONT AVENUE, N. W.
WASHINGTON, D. C. 20005
(202) 887-0800
FAX (202) 775-8518

SANTO DOMINGO OFFICE
RODRIGUEZ, CENIO 12
SANTO DOMINGO, DOMINICAN REPUBLIC
(809) 685-1208
FAX (809) 686-3826

September 13, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

VIA TELEFAX
AND OVERNIGHT
DELIVERY

Dear Mr. Frye:

The violations of the Board's 10(j) injunction continue unabated. Since my letter of September 10, the UMWA has committed the following violations:

1. EASTERN ASSOCIATED COAL CORP.

A. Colony Bay

1. At 8:30 p.m., on September 12, 1993, there were seven shots fired from the area of the picket line. Pickets also attempted to tear down phone and power lines at the guard shack.

2. At 2:00 a.m., on September 13, 1993, while a guard was leaving his vehicle, unidentified individuals threw an old railroad tie from the railroad trestle above the guard shack. The tie broke and pieces landed on either side of the guard. Shortly thereafter, another railroad tie was thrown from the trestle and hit the guard's Bronco and broke the back window. These areas are near the picket line.

3. Beginning at 2:30 a.m., on September 13, 1993, the guard shack and the Bronco located at the guard shack were rocked by pickets until approximately 4:00 a.m.

4. At 7:00 a.m., on September 13, 1993, the salaried employees were blocked by approximately ten pickets and twenty members of the Womens' Auxiliary of Local 9177, UMWA, as they attempted to enter the facility. The blockage lasted until 8:45 a.m.

SMITH, HEENAN & ALTHEAN

D. Randall Frye, Regional Director
September 13, 1993
Page 2

5. At the same time the blocking was occurring, the Beaver Pond substation was attacked by pickets from the woods. Rocks were thrown by the pickets from the woods and a security vehicle was damaged.

B. Wells Complex

On the evening of September 12, 1993, the guard shack was attacked by pickets. Paint was thrown on the guard shack windows. The vehicles stationed at the guard shack were rocked with one window broken.

C. Big Mountain

1. On the evening of September 12, 1993, four shots were heard near the guard shack. One of the shots broke a light at the guard shack.

2. At approximately 6:30 a.m., September 13, 1993, one vehicle containing supervisory employees was blocked from entering the facility for approximately 15 minutes.

D. Montcoal No. 7

1. At 7:00 p.m., on September 12, 1993, near the Twilight Gate, four cars were damaged by rocks thrown by pickets. Larry McKnight, a mine committeeman caused a slow down of four company vehicles on the Twilight Road. As they neared the picket shack, Larry McKnight began beeping his horn and at that moment rocks were thrown from the weeds and the vehicles were hit by paint and a tar-like substance.

2. On the Twilight Road, shortly after 7:00 p.m., pickets shot a company vehicle twice with a pellet gun.

2. HOBET MINING, INC.

Hobet No. 21

On September 13, 1993, as salaried employees were going to work, apples were thrown at their vehicle by pickets.

SMITH, HEBBMAN & ALTHEM

D. Randall Frye, Regional Director
September 13, 1993
Page 3

We will follow this letter with charges and affidavits. Each event described above constitutes contempt of the Board's 10(j) injunction, as each of those events coerced and intimidates employees in the exercise of their rights. Some of that intimidation threatened the lives of employees. These employees continue to urgently need vigorous enforcement of the 10(j) injunction to protect their safety. Failure to do so risks that safety.

Very truly yours,



Forrest H. Roles

FHR/tsr

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.

FORREST H. ROLES
ANNA M. DAILEY
MARK A. CARTER
MARK E. HEATH
DONNA M. COLBERG

FAX

RECEIVED	
SEP 10 '93	
SMITH, HEENAN & ALTHEN	
ONE VALLEY SQUARE, SUITE 1380	
Post Office Box 2549	
CHARLESTON, WEST VIRGINIA 25329-2549	
(304) 342-8960	
FAX (304) 342-5781	
Copies	Route
IFE } PHCI	
TUK } PCL	
GSI } PCL	
File	Shred

LAW OFFICES
SMITH, HEENAN & ALTHEN
ONE VALLEY SQUARE, SUITE 1380
Post Office Box 2549
CHARLESTON, WEST VIRGINIA 25329-2549
(304) 342-8960
FAX (304) 342-5781

WASHINGTON, D. C. OFFICE
1110 VERMONT AVENUE, N. W.
WASHINGTON, D. C. 20005
(202) 687-0800
FAX (202) 778-8518

SANTO DOMINGO OFFICE
RODRIGUEZ, OMJIO 12
SANTO DOMINGO, DOMINICAN REPUBLIC
(809) 685-1202
FAX (809) 685-2826

September 10, 1993

D. Randall Frye, Regional Director
National Labor Relations Board
Region 9
John Weld Peck Federal Building
550 Main Street - Room 3003
Cincinnati, Ohio 45202-3271

VIA TELEFAX
AND OVERNIGHT
DELIVERY

Dear Mr. Frye:

The violations of the Board's 10(j) injunction continue at the same rate as indicated in my previous letters. Since my letter of September 9, the following violations have occurred.

1. EASTERN ASSOCIATED COAL CORP.

A. Colony Bay

1. At 3:30 p.m. on September 9, 1993, pickets blocked a gas truck trying to enter the Colony Bay mine. The road was opened by the State Police and the truck was able to get in.

2. At 9:00 p.m. and 10:30 p.m. on September 9, 1993, pickets fired between 15 - 20 shots from the picket shack at lights illuminating the Colony Bay Complex. Three of the lights were shot out.

B. Big Mountain

1. At 7:00 p.m. on September 9, 1993, pickets at the picket line blocked the last four vehicles of the convoy leaving the mine for the day. They blocked the road for approximately 15 minutes and then let the convoy leave.

D. Randall Frye, Regional Director
September 10, 1993
Page two

2. Beginning at approximately 8:50 a.m. on the morning of September 10, between 20 - 30 pickets from the Big Mountain Local, led by its President Charles Santonio, blocked County Rt. 5 known as the Prenter Hollow Road, approximately 9 miles from its intersection with Rt. 3. Blocked on the road was a convoy of trucks delivering supplies to the Big Mountain mine. After the convoy was able to enter the mine and unload, it left about noon. It was blocked again on Route 5 by trees cut across the road. Pickets bashed the windshield and the right door window of the rear guard vehicle with pole axes. Fortunately, they were made of lexan. When a picket pulled a gun, the trucks rammed through the tree and escaped.

C. Wells

1. Continuously through the afternoon and night of September 9 and morning of September 10, pickets from the picket shack placed jackrocks on the bridge and road. When the jackrocks were picked up, the pickets would put new ones on the bridge and road.

2. Also during the night of September 9, someone from the picket line shot a pellet gun at the guards. Also, pickets placed flocculant, a chemical used in preparing coal, on the bridge. The effect of placing flocculant on the bridge is to make it extremely slick and dangerous for anyone trying to drive across it. The bridge is located immediately against the picket shack.

3. During the night, pickets threw rocks from the back of picket Gibson's truck.

2. HOBBET MINING, INC.

Hobbet No. 07

At approximately 7:45 p.m. on September 9, 1993, a guard leaving the 07 mine had his vehicle jackrocked. The jackrock flattened a tire on the vehicle.

Additionally, we have heard repeated and consistent rumors that the UMWA has planned mass violations next week. According to those rumors, the Union leaders are asking for volunteers willing to participate in road blocking by mass

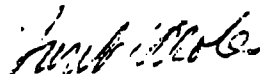
SMITH, HEENAN & ALTHEM

D. Randall Frye, Regional Director
September 10, 1993
Page three

picketing and the takeover of company buildings and facilities. Also, they are planning continued vandalism and assaults on people working for the charging parties, their contractors and vendors. According to the rumors, International Vice President Roberts is directing the preparations.

We will follow this letter with charges and affidavits. The charging parties continue to urgently need vigorous enforcement of the 10(j) injunction.

Very truly yours,



Forrest H. Roles

FHR/kda

cc: The Honorable Dennis R. Knapp
U.S. Marshal Charles Adkins
John C. Parr, Assistant U.S. Attorney
Charles F. Donnelly, Esq.

BCOA LATEST PROPOSAL

- * 7 year agreement with \$.50 raise over contract**
- * Job Security Package is less than we are asking**
- * Insurance coverage drops to 80/20 after 3rd year; Is 60/40 if you don't use required physicians**
- * 12 hour mandatory work day at the discretion of the employer**
- * 7 day work week at the discretion of the employer**
- * No overtime pay until 40 hours are accumulated; Weekend shifts are at straight time unless over 40 hours**
- * No past practices will be recognized**
- * Employer has option to change out crews at face**
- * Lost time due to turn sheet errors & grievances will be made up with extra turns on the turnsheet instead of payment in money**
A maximum of 6 graduated days may be accumulated after 18 years of service
- * Employer has right to produce coal with partial crews**

BCOA LATEST PROPOSAL

- * 7 year agreement with \$.50 raise over contract**
- * Job Security Package is less than we are asking**
- * Insurance coverage drops to 80/20 after 3rd year; is 60/40 if you don't use required physicians**
- * 12 hour mandatory work day at the discretion of the employer**
- * 7 day work week at the discretion of the employer**
- * No overtime pay until 40 hours are accumulated; Weekend shifts are at straight time unless over 40 hours**
- * No past practices will be recognized**
- * Employer has option to change out crews at face**
- * Lost time due to turn sheet errors & grievances will be made up with extra turns on the turnsheet instead of payment in money**
- * A maximum of 6 graduated days may be accumulated after 18 years of service**
- * Employer has right to produce coal with partial crews**

**The 1993 Coal Industry
Labor Dispute
One Company's Perspective**

**Prepared by
Peabody Coal Company**

June 11, 1993

Executive Summary	1
I. Introduction	2
II. The U.S. Coal Industry	3
III. History of the National Bituminous Coal Wage Agreement.....	5
IV. UMWA Tactics.....	7
A. Work Stoppages	
B. Slowdowns	
C. Corporate Campaigns	
D. Media Programs	
V. The NBCWA Labor Agreement's Lack of Competitiveness	9
A. Productivity Differential	
B. Wage and Benefit Differential	
VI. The Health Care Issues.	11
A. Health Care for Active Miners	
B. Health Care for Retirees	
VII. The Double Breasting Issue	13
A. The Decline of Union Membership	
B. Attractiveness of the UMWA	
C. The UMWA's Demands for Automatic Recognition	
D. Peabody Coal Company's Parent	
VIII. The "Job Security" Issue	16
A. UMWA Job Security Demands	
B. BCOA's Request for Competitiveness	
IX. Report Highlights.....	18

Executive Summary

The strike by the United Mine Workers (UMWA) against selected mines operated by members of the Bituminous Coal Operators' Association (BCOA) currently involves more than 12,000 miners. The UMWA is threatening to expand the strike to all BCOA companies. This would affect 42,000 miners, who produce 28 percent of the nation's coal.

The current coal miners' dispute is a case study of labor-management relations for most U.S. basic industries. The union is seeking "job security" for its members and an increase in its membership rolls. The companies are seeking labor contract revisions to improve their productivity and enable them to compete against the growing non-union sectors at home and abroad. High retiree benefit costs and increasing health care costs for active miners are added burdens on the unionized companies and on the union itself. The union and the companies offer very different definitions of "job security."

To the union, job security means guaranteed employment levels for union members, guaranteed weekly pay, and concessions to ensure the success of the union's organizing efforts. The companies argue that impending mine closures due to severe market conditions and implementation of the Clean Air Act make it financially impossible to agree to these demands.

To the employers, job security means the ability to compete for new business and thus to employ union members. High productivity is required to fund high retiree benefits and escalating health care. The BCOA companies are seeking to eliminate outmoded, inefficient work rules and scheduling restrictions that impede productivity. They are also seeking employee sharing of health care costs and the use of health care cost containment programs. The companies argue that, unless the agreement is changed, uncompetitive mines will close. That will cause further loss of union jobs, and make new union mines economically impossible.

Demands for guaranteed job levels, minimum weekly pay, and automatic UMWA representation will not provide the job security the union seeks for its members. Bargaining delays, strikes, slowdowns, sabotage and violence will not reverse the decline in union membership or enhance its fortunes as an institution. Conversely, a competitive labor agreement with productivity incentives and flexible work rules would encourage investment in new UMWA-represented mines and help the union reach its stated goals.

I. Introduction

At present, the strike involves some 12,000 UMWA miners. The UMWA is threatening to expand the strike to all BCOA member companies. This would affect 42,000 miners who work under the NBCWA and produce 28 percent of the nation's coal.

This briefing paper summarizes the background and issues involved in the labor dispute between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators' Association (BCOA), a multi-company bargaining group. The paper was prepared by Peabody Coal Company (PCC). Eastern Associated Coal Corp. (EACC) and PCC are both subsidiaries of Peabody Holding Company. They are two BCOA companies which were struck by the UMWA on February 2, 1993. The strike against PCC and EACC ended on March 3 when the parties signed a 60-day extension of the previous labor agreement. After the extension expired on May 3, the UMWA began a series of selective strikes against mines owned by several other BCOA member companies.

The National Bituminous Coal Wage Agreement (NBCWA) expired on February 1, 1993. Since November 4, 1992 when bargaining began, the UMWA has refused to acknowledge that the BCOA member companies constituted a proper bargaining group. The UMWA has insisted that the parent companies of the BCOA member companies come to the bargaining table. When the BCOA refused, the UMWA called a selective strike against PCC and EACC beginning February 2. The initial strike involved some 2,500 employees of PCC in Illinois, Indiana, and Kentucky, and 2,300 employees of EACC and PCC in West Virginia. On March 1, the strike was expanded to include 10 mines owned by five different BCOA member companies. An estimated 1,700 additional employees were involved in the expanded strike against these additional companies.

On March 3, the BCOA and the UMWA announced an agreement which extended the 1988 NBCWA by 60 days. On March 21, UMWA and BCOA negotiating teams resumed discussions. Eight meetings were held during the extension period, some under the auspices of the Federal Mediation and Conciliation Service (FMCS), but little progress was made. On May 3, at the end of the extension period, the UMWA broke off talks. One week later, it began strikes against 10 mines in Illinois and Indiana owned by Zeigler Coal Holding Company, Arch of Illinois, and Amax Coal Industries. On May 18, the strike was expanded to several mines in West Virginia owned by Arch of West Virginia and two subsidiaries of Ashland Coal Company. On May 25, the strike was expanded to four mines of Consol Energy and six mines of Rochester & Pittsburgh Coal Company. On June 3, the strike was again expanded to include additional mines owned by Consol, two mines operated by EACC, and three mines owned by PCC. On June 10, another 16 mines belonging to PCC, EACC and Consol were added as strike targets.

At present, the strike involves some 12,000 UMWA miners. The UMWA is threatening to expand the strike to all BCOA member companies. This would affect 42,000 miners who work under the NBCWA and produce 28 percent of the nation's coal.

II. The U.S. Coal Industry

Coal is one of the most important sources of energy for the United States. Coal is a reliable, abundant, inexpensive fuel that helps reduce the U.S. balance of trade deficit. The coal industry is also an important source of U.S. employment. It employs 115,000 workers directly and an estimated 300,000 in related industries.

*As a result of this
competition, a number
of UMWA-represented
mines have closed.
Employment of UMWA
miners under the NBCWA
has dropped from 133,000
in 1979 to 42,000 in 1992.*

In 1992, U.S. coal mines produced 1 billion tons of coal. This accounts for 32 percent of all primary energy production in the United States and 23 percent of primary energy consumption. Approximately 11 percent of U.S. coal production is exported to Canadian, European Community, Pacific Rim and South American customers.

Most domestic coal—about 77 percent or 775 million tons—is consumed by electric utilities. Due to its reliability and low cost, coal is the source of 55 percent of all U.S. electricity generation. The remaining domestic consumption is by industrial and commercial customers (80 million tons per year) and by steel companies that use coal to make coke for blast furnaces (34 million tons per year).

Total direct employment in the coal industry has declined by 91,000 workers since 1979, although coal production rose 52 percent during the same period. This trend is likely to continue. Productivity improvements necessitated by competitive pressures will continue to offset future growth in coal production.

Table I—Total U.S. Coal Production and Employment

Year	Tons Produced (Millions)	Number of Mines	Number of Employees
1975	654.6	6,168	189,880
1980	829.7	3,876	224,938
1988	950.3	3,860	135,366
1989	980.7	3,620	131,497
1990	1,029.1	3,430	131,306
1991	996.0	3,022	120,602
1992	1,000.3*	2,800	114,572**

Source: U.S. Energy Information Administration

* 1992 Preliminary Numbers

** 1992 U.S. Department of Energy Estimate

During the period 1975-1990, productivity in the coal industry increased from 1.81 tons per man-hour to 3.83 tons per man-hour, an increase of 112 percent. This is principally because coal companies have made large infusions of capital in new and more productive technologies, in an effort to keep pace with competitive pressures. During the same period, average U.S. coal prices declined, in real terms, by 51 percent.

II. The U.S. Coal Industry

Continued

As is apparent from this trend, competition is the principal feature of the U.S. coal industry. There are more than 2,800 coal mines competing with each other in the United States. In addition, the U.S. producers compete with large, international producers in Australia, Canada, Colombia, Indonesia, and South Africa. Now producers in Poland and the former Soviet Union are entering the export coal market. This intense competition has resulted in steadily falling coal prices for U.S. producers.

Table 2—Prices for Selected U.S. Coals

Year	East	West	Average
1975	N/A	N/A	\$39.09
1980	\$40.92	\$27.17	34.20
1988	27.20	11.99	21.24
1989	25.76	11.29	20.11
1990	24.81	10.43	19.22
1991	23.74	10.24	18.24

Source: Resources Data Institute (RDI)

Average FOB Mine Price is in 1987 dollars, calculated using GDP implicit price deflators (GDP IPD).

These price decreases affect coal producers in two ways. First, producers are forced to sell a portion of their production each year—at least that portion of production not subject to long-term sales contracts—at steadily falling prices. To offset these price decreases, producers must continually achieve cost savings, which are difficult to sustain with a depletable commodity such as coal. Second, as long-term sales contracts expire, the producers are forced to accept replacement business at much lower prices. In many cases, the affected mines become unprofitable at the lower prices and must be closed.

As prices fall, increased pressure is placed on operating cost structures and profit margins. At many mines, 40 to 50 percent of the operating costs are a result of labor and fringe benefits expenditures. Competitive bidding practices by coal buyers result in awards of new business to the lowest-priced (and hence lowest-cost) coal sources. Because non-union mines usually have a lower cost structure than UMWA mines that operate under the NBCWA, most new coal contracts have been awarded to non-union coal producers.

As a result of this competition, a number of UMWA-represented mines have closed. Employment of UMWA miners under the NBCWA has dropped from 133,000 in 1979 to 42,000 in 1992.

III. History of the National Bituminous Coal Wage Agreement

In 1946, President Harry S. Truman and UMWA President John L. Lewis concluded an agreement to end a nationwide coal strike. The bargain committed the UMWA to the acceptance of mechanization in coal mines, in exchange for the companies' commitment to certain benefits for UMWA miners, including pensions and health care. By 1950, more than 90 percent of U.S. coal was produced by UMWA-represented mines, almost all under the National Bituminous Coal Wage Agreement between the union and the Bituminous Coal Operators' Association.

During the 1993

negotiations, the UMWA

refused to supply copies

of the concessionary labor

contracts in response to

the BCOA's information

request. BCOA believes

that all of the concessions

it has requested during the

current negotiations have

already been granted by

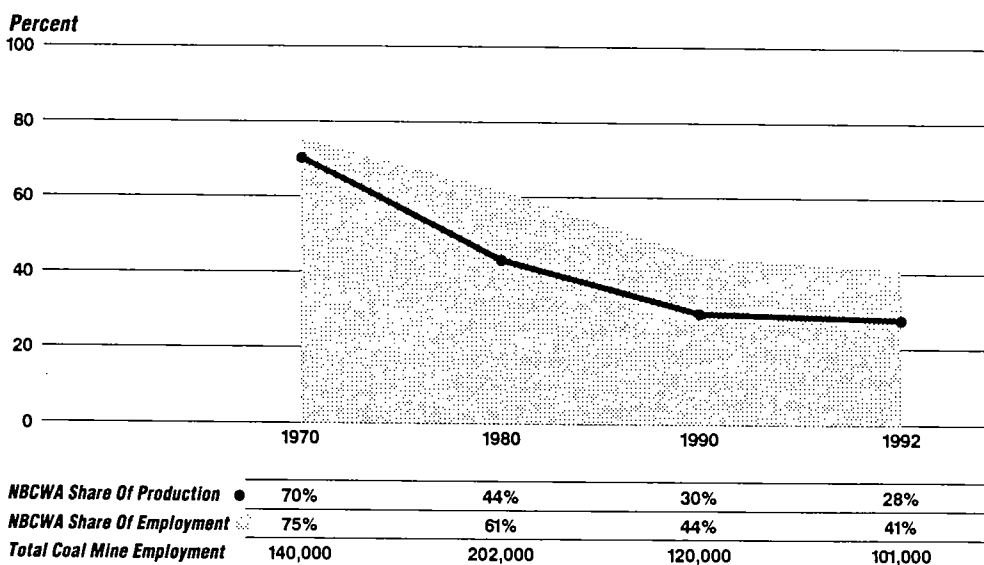
the UMWA to various

BCOA competitors.

The arrangement forged by the union and the government paved the way for the application of new coal mining technologies. These higher technologies brought improvements in productivity. Equally important, the new technologies improved the working conditions and the safety and health of the miners.

By 1970, coal mine employment had declined to about 140,000—down from an estimated 416,000 in 1950. By 1980, the energy crisis and new reclamation requirements raised coal mine employment to 225,000. From 1980 to 1990, coal mine employment fell 42 percent to 131,000, although coal production increased from 830 million tons to 1,029 million tons. The UMWA portion of coal produced fell from 90 percent in 1950 to 44 percent in 1980. By 1992, there were some 42,000 UMWA employees working under the terms of the NBCWA, producing only 28 percent of the nation's coal with 41 percent of the industry's work force.

NBCWA Share of Total Coal Mine Employment



Footnote: 1992 Preliminary Numbers

Source: BCOA

III. History of the National Bituminous Coal Wage Agreement

Continued

From 1964 until 1981, there was a succession of three-year NBCWA contracts. Most were achieved after lengthy and sometimes violent strikes. Since 1981, there have been no significant changes in the basic wages, benefits, mine scheduling and other elements of the NBCWA package that affect productivity and costs, despite the mounting competition and the loss of UMWA jobs.

To respond to the mounting competition and to slow its loss in membership, the UMWA began offering concessionary or "sweetheart" contracts to certain non-BCOA companies during the 1980s. Concessionary labor agreements were signed with a number of producers, including subsidiaries of A.T. Massey Coal Company and the Pittston Coal Group, as well as scores of smaller companies. The concessions were made in many areas. There were changes in hiring practices, improvements in mine scheduling, relaxation of work rules that restrict production, cost-containment measures for health care, and elimination of contributions to certain multi-employer funds used to pay retiree health care benefits.

During the 1993 negotiations, the UMWA refused to supply copies of the concessionary labor contracts in response to the BCOA's information request. BCOA believes that all of the concessions it has requested during the current negotiations have already been granted by the UMWA to various BCOA competitors.

IV. UMWA Tactics

The UMWA's new approach is a patient, long-term program. It involves diversionary tactics such as slowdowns and selective strikes as well as programs to mold and control public and political opinions. If it is successful in forming favorable opinions, the union will probably attempt a political resolution of the dispute.

UMWA tactics and conduct to achieve its contract objectives have become more sophisticated in recent years. The tactics include traditional work stoppages, slowdowns, corporate campaigns, public relations programs and political activities. The difference in its current tactics stems from the union's recognition that work stoppages do not always force companies to agree to its demands. Although selective strikes are still used as diversions, the major change is the union's attempt to control public and political perceptions in order to obtain government-imposed solutions favorable to the union.

The following paragraphs summarize the UMWA's tactics over years of negotiation of the NBCWA.

A. Work Stoppages

Historically, relations between the BCOA and the UMWA were marked by strikes and violence. A 110-day strike against all UMWA-represented companies occurred in late 1977 and early 1978. This was followed by a 72-day strike in 1981. Violence in the 1981 strike resulted in extensive property damage, injuries, and two fatalities.

When agreements expired in 1984 and 1988, no substantive changes were made in the NBCWA to allow the mines to become more competitive. The disputes were settled without a strike on both occasions. Nevertheless, a violent strike against A.T. Massey Coal Company occurred in 1985, resulting in heavy property damage, injuries, and at least one fatality. Another lengthy strike against the Pittston Coal Group occurred in 1989.

It should be noted that both Massey and Pittston had dropped out of the BCOA and were attempting to negotiate concessions in the NBCWA when the strike and violence occurred. As a result of violence related to the strike against Pittston, the union was fined \$52 million by a Virginia state court. With interest, the fines now amount to approximately \$65 million. The judgment was upheld by the Virginia Supreme Court in January 1993; an appeal is now before the U.S. Supreme Court. As a result of the union violence at Massey, the Fourth Circuit Court issued an order proscribing certain UMWA conduct during any strikes and holding union leadership responsible for acts of violence.

The violence continued during the UMWA's 30-day selective strike against EACC and PCC in February, 1993. At EACC's mines in West Virginia, windows were broken in trucks and cars; rocks were thrown at supervisors and guards; steel balls and bolts were fired from slingshots at guards and supervisors; a supervisor was shot with a pellet gun; a truck was burned by a Molotov cocktail; and gunshots were fired into the side of a mine office. At PCC's Midwest operations, the UMWA was more controlled. A truck was burned and tires were damaged by "jackrocks" (nails welded together).

Charges against the UMWA were filed with the National Labor Relations Board by EACC; however, they were withdrawn, without prejudice, at the beginning of the 60 day extension in March 1993. Immediately after the extension agreement expired, there were acts of sabotage on May 4, 5, and 6 at three PCC operations.

IV. UMWA Tactics

Continued

B. Slowdowns

During the extension period and thereafter, the union played an increasingly sophisticated "inside game" by deliberately impeding productivity at certain PCC and EACC mines. Productivity declines of 10 to 15 percent occurred as a result of abnormally high absenteeism and what appeared to be a concerted effort to reduce production. The slowdown effort was outlined in an instruction document prepared by the UMWA called the "Inside Game." The UMWA also engaged in three illegal strikes at PCC and EACC mines during the extension period. The extension agreement specifically prohibited strikes and union tactics to impede production.

C. Corporate Campaigns

Another UMWA tactic is the "corporate campaign." Its purpose is to create pressure so that the corporate parent of the targeted company will force its subsidiary to make concessions to the union to avoid potential adverse publicity. In 1985, the UMWA organized a boycott of Shell Oil Company, then a partial owner of A.T. Massey Coal Company, accusing Shell of "fueling the wheels of the racist apartheid system" in South Africa. During the Pittston strike in 1989-1990, a union shareholders group attempted to replace Pittston management. The union also pressured Pittston's bankers and disrupted board meetings at other companies whose boards include some of Pittston's officers.

The UMWA is using this corporate campaign technique in the current dispute against Consol Energy's owners and Peabody Holding Company's owners.

D. Media Programs

The UMWA also uses the media to rally support for the union and its positions. The use of public relations firms and a network of miners who serve as public relations aides began during the Pittston and Massey disputes. It is now a common practice for the UMWA. Two high-powered public relations/political campaign firms, Greer, Margolis & Mitchell and the Kamber Group, have been employed by the UMWA in the current dispute. The public relations program uses many of the elements of a presidential election effort: campaign trips to key areas of support, attention-getting speeches, grass-roots endorsements, and coordinated radio and newspaper ads.

The UMWA has begun to recognize that it cannot achieve its negotiating objectives through traditional economic strikes or through violence. If traditional violent tactics are used, the public and Congress will no longer support the UMWA. Given the UMWA's unrealistic demands, the BCOA companies have no choice but to hold out.

The UMWA's new approach is a patient, long-term program. It involves diversionary tactics such as slowdowns and selective strikes as well as programs to mold and control public and political opinions. If it is successful in forming favorable opinions, the union will probably attempt a political resolution of the dispute.

V. The NBCWA's Lack of Competitiveness

Although non-union workers may receive higher real incomes, their employers have lower overall labor costs compared with UMWA employers. Hence, it is a lose-lose situation for UMWA miners and their employers.

Coal mine productivity has improved markedly in recent years. To keep costs in line with declining prices, larger coal producers have modernized mines with new, more productive technology, including broad application of longwall mining techniques, automated coal handling facilities and higher-capacity surface mining equipment. Despite this infusion of capital, productivity at union mines lags behind comparable non-union facilities. Moreover, overall per-hour labor costs at union mines are generally higher than those at non-union operations.

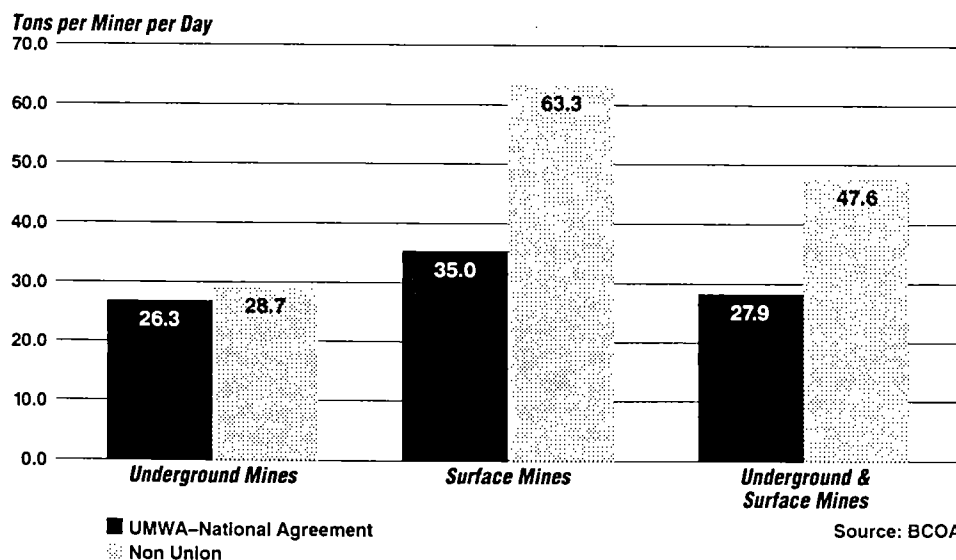
A. Productivity Differential

Non-union mines and mines operating under "sweetheart" contracts with the UMWA have certain competitive advantages over mines operating within the terms of the NBCWA. Among these advantages are the freedom to select and hire personnel based upon ability rather than seniority, and the absence of scheduling and job practice restrictions. Current NBCWA provisions restrict productivity in several ways: by maintaining certain work rules, including inflexible starting times and other scheduling restrictions based on past custom and practice; by limiting the company's ability to contract out repair and maintenance work; and by adhering to rigid job classifications. Moreover, non-union producers have implemented incentive plans to compensate their employees for the higher productivity that occurs at their mines. The NBCWA requires the UMWA's consent before such plans can be implemented.

As a result of these factors, average productivity at non-union underground mines is 9 percent greater than at underground mines operating under the NBCWA strictures. For surface and underground mines together, the productivity differential is 70 percent. Even if figures for the highly productive non-union surface mines in Wyoming are excluded, the productivity average would be 34 percent higher for non-union mines.

Table 3—Comparison of Miner Productivity

Tons per Miner per Day—1991 UMWA National Agreement Mines vs. Other Mines



V. The NBCWA's Lack of Competitiveness

Continued

B. Wage and Benefit Differential

Table 4 indicates the differential of the basic wage and benefit package at underground mines. (Most new bituminous mines are underground.) It shows that the cost to the employer is \$4 to \$5 per hour higher under the NBCWA than at a large non-union mine. Payments for health care, directly and through the multi-employer is the primary reason.

Table 4—Comparison of Hourly Underground Mine Wages and Benefits

	NBCWA/UMWA	Large Non-Union
Straight Time Wages	\$15.843 ¹	\$16.723
Premium Wages	1.740	1.840
Vacation and Holidays	1.917	1.547
Personal and Sick Days	.330	.000
Shift Differential	.230	.000
Other Pay for Hrs. Not Worked	.290	.335
Life and ADD	.119	.110
Sickness and Accident	.187	.380
Clothing Allowance	.102	.000
Health, Vision, Dental	3.144	1.830
Pension and SIP		1.450
TOTAL WAGES AND BENEFITS RECEIVED BY EMPLOYEE	23.902	24.215²
1950 Pension Trust	.000	.000
1950 Benefit Trust	2.430 ³	.000
1974 Pension Trust	.710	.000
1974 Benefit Trust	.820 ³	.000
Education and Training Fund	.050	.000
FICA	1.505	1.565
Workers' Compensation	1.870	1.870
Other	.350	(.700) ⁴
TOTAL 1992 COST PER HOUR TO EMPLOYER	\$31.637	\$26.950

Source: PCC Analysis of Contracts—1992 Data

¹Grade 3 UG

²Does not include incentive plan payments

³Beginning October 1993, payments to the 1950 and 1974 Trusts will be replaced by a per capita payment for each company's retirees and a proportionate number of orphan retirees. Costs will vary for each company.

⁴No helper classification

On an annual basis, a non-union coal miner at a mine comparable to one operating under the NBCWA will earn \$700 more than his union counterpart. With incentive plan payments, which many non-union companies use, this compensation differential can be several thousand dollars per year.

Although non-union workers may receive higher real incomes, their employers have lower overall labor costs compared with UMWA employers. Hence, it is a lose-lose situation for UMWA miners and their employers. The employees receive less but they cost employers more. Because of the labor agreement, UMWA miners also produce less than non-union miners. The result is that UMWA mines operating under the NBCWA do not compete effectively with non-union operations.

VI. The Health Care Issues

Health care is one of the most expensive and least controllable costs for the signatories to the NBCWA. There are really two health care problem areas: payment of first-dollar coverage for active miners and former employees who retired on or after January 1, 1976 as well as for the dependents of both groups; and the coal miner retiree health care issue, which has been the subject of recent federal legislation.

The two health care issues have been major causes for the decline in the number of employees at mines operating under the NBCWA. Non-union mines have lower health care costs for active and retired employees, and do not pay any health care costs for orphan retirees.

A. Health Care for Active Miners

Resolution of the issues involving health care for active UMWA miners and post-1976 retirees is critical in the 1993 negotiations because it is at the heart of BCOA's chief concern: the competitiveness of the mines operating under the NBCWA. The current UMWA health care program for active miners has some of the most liberal benefits in the United States: "first dollar" health benefits, broad coverage for dependents, and a lack of cost containment features. Recent high inflation in health care costs has magnified these problems.

Non-union mines and some of the "sweetheart" UMWA contract mines have added cost-sharing and cost-containment features to their health care programs. These features make the beneficiaries more careful consumers of health care benefits while lowering overall health care costs at the non-union mines.

B. Health Care for Retirees

The second issue, retiree health care benefits paid from UMWA multi-employer funds, has a complicated history. The 1950 UMWA Benefit Trust was created to ensure that retired UMWA coal miners and their dependents would receive health care benefits. In 1974, the BCOA companies assumed direct responsibility for providing health care benefits to their own employees who retired after 1975.

A second fund, the 1974 UMWA Benefit Trust, was created to provide benefits to certain "orphan" retirees whose former employers were no longer in business. Federal court decisions have since expanded the scope of the 1974 Benefit Trust to include a large number of retirees whose former employers simply "dumped" them into the fund. BCOA companies and other NBCWA signatory companies financed the 1950 and 1974 Benefit Trusts through assessments, originally based on tonnage, but after February 1988, based on the number of hours worked by UMWA-represented employees.

During the 1980s, as a number of BCOA companies left the coal business and UMWA-represented employment declined, the financial base of support for the funds declined significantly. Moreover, a significant number of former BCOA companies closed union mining operations and simply refused to pay health care benefits to their own retirees.

Congress responded by enacting the Coal Mine Retiree Health Benefits Act of 1992, which guarantees certain retiree health care benefits and assigns responsibility for beneficiaries of the 1950 and 1974 Benefit Trusts to their last employer or

VI. The Health Care Issues

Continued

its affiliate. Benefits for orphan retirees and their dependents are to be financed by a transfer of surplus funds from the 1950 UMWA Pension Trust and later from interest on the unexpended amounts in the Abandoned Mined Land Fund under Title IV of the Surface Mining Control and Reclamation Act of 1977. The 1992 Health Benefits Act was expected to eliminate the only issue believed to be irreconcilable in the negotiations over a new NBCWA.

The two health care issues have been major causes for the decline in the number of employees at mines operating under the NBCWA. Non-union mines have lower health care costs for active and retired employees and do not pay any health care costs for orphan retirees.

The health care benefit issues for UMWA members who retire on or before September 30, 1994 were addressed by the 1992 Health Benefits Act. Health care benefit programs for active employees and for those who retire after September 30, 1994 must be resolved in the current negotiations.

VII. The Double Breasting Issue

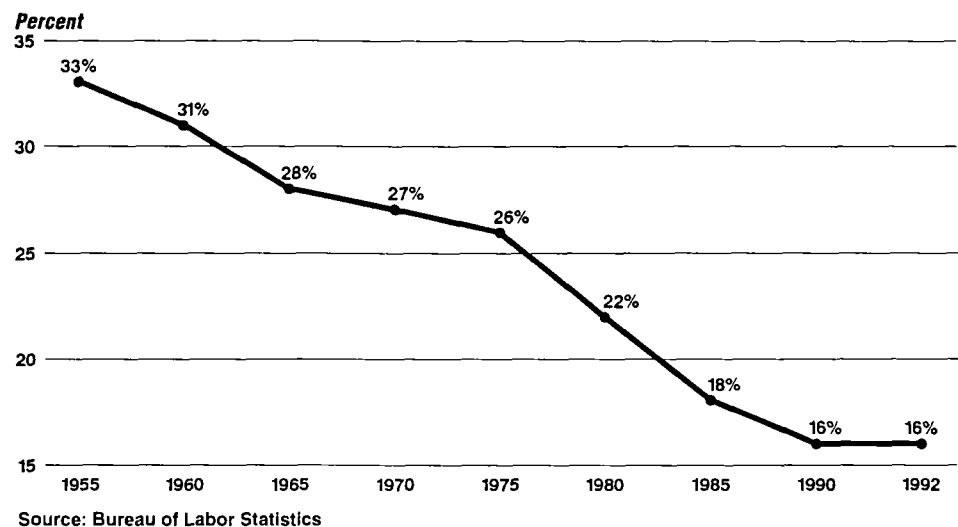
The double breasting issues, the decline in UMWA membership and other demands by the UMWA are all related to the needs of the UMWA as an institution. These issues are the primary reasons for the current strikes. They have no impact on the job security or economic welfare of the individual worker.

Because of the UMWA's record of work stoppages as well as the union's resistance to improvements in productivity and cost containment, a number of corporate owners (parents) of the BCOA companies have established or purchased non-union subsidiaries that produce bituminous coal. The parents contend that they have the legal right to own both union and non-union companies, a common practice in U.S. business known as "double breasting." The UMWA contends that all of the parents' subsidiaries are covered by the NBCWA and that all must employ UMWA members.

A. The Decline of Union Membership

The UMWA's position against double breasting is shared by a number of U.S. trade unions that have suffered a significant decline in union membership.

Union Represented Employees vs. Total U.S. Nonagricultural Employment



The decline in union membership results from a number of factors, including a general decline in the predominantly unionized basic industries due to intense competition in global markets. The decline also results from the unions' lack of success in organizing non-union companies.

For the UMWA, its failure to organize non-union coal companies makes the double breasting issue critical. If the parent companies maintain the option of opening or purchasing non-union subsidiaries that are more productive and competitive, they will naturally funnel their capital into the investments with the highest returns.

VII. The Double Breasting Issue

Continued

B. Attractiveness of the UMWA

An adage of labor organizations is: "A union sells management's mistakes." A corollary is also true: The fewer mistakes management makes with its work force, the less a union is needed.

Most large coal producers have learned to avoid repeating past mistakes in their dealings with employees. Workers are generally treated with dignity, compensated well, given safe working environments, and made to feel a part of the company team. The hourly wages and benefits of non-union workers at large underground coal mines are higher than comparable pay under the NBCWA. The overall pay advantage for non-union workers is even greater when incentive or gain-sharing plans are added.

The union's inability to attract new members is also affected by the fact that many new mines are located in areas where the work force has little sympathy for organized labor. Another consideration for the workers and employers alike is the prospect of loss of income and profits during strikes and other disruptions.

Loss of membership and its lack of success in organizing non-union mines has forced the UMWA to raise the double breasting issue at the bargaining table.

C. The UMWA's Demands for Automatic Recognition

To make it easier to organize existing non-union mines and to gain automatic recognition as the bargaining agent for future non-union mines, the UMWA has made three demands during the negotiations. If the parent companies were to accept these demands, the double breasting issue would evaporate and the UMWA's membership rolls might be temporarily increased.

Two of the UMWA's three demands are designed to make it easier for the union to organize existing non-union subsidiaries of the parents. The union demanded that all subsidiaries of the parent pledge neutrality (i.e., silence irrespective of the union's claims) during organizing drives. Because good employee communication is a basic element of good management, neutrality would give the union a major advantage and it would deprive employees of information. The union also demanded that it be recognized without secret ballot election if 51 percent of the workers sign a union card. The union's approach would make employees vulnerable to intimidation during organizing campaigns.

The third demand is for the parents to agree that all new mines acquired or developed by the parents' subsidiaries would automatically be UMWA-represented and subject to the NBCWA. This demand places a major restraint on corporate investment. The demand also commits employees of new subsidiaries to union representation without allowing them the freedom of an election.

VII. The Double Breasting Issue

Continued

D. Peabody Coal Company's Parent

The UMWA's media campaign has accused Peabody Coal Company's parent of "using profits...to open mines...that refuse to give our members...jobs." In fact, Peabody Coal's parent has not opened any non-union bituminous coal mines.

Peabody Holding Company, Inc. (PHC) was established in 1977. It purchased a number of coal mining companies and related entities. PHC itself operates no mines, has no UMWA employees, and has never been signatory to any NBCWA. Two of PHC's current subsidiaries, PCC and EACC, are BCOA members. Their hourly employees are all UMWA miners. Another operating entity has a separate UMWA contract which was renewed in 1992 for a five-year term. A fourth subsidiary in Wyoming's Powder River Basin produces sub-bituminous coal. In 1987, PHC acquired a fifth subsidiary in connection with the purchase of EACC: a non-union mine in Colorado. None of PHC's subsidiaries have built any new non-union mines under the term of the 1988 NBCWA although the UMWA has repeatedly alleged they have.

The corporate structure of PHC and its subsidiaries is a result of a series of individual investment and management decisions, and not for the purpose of circumventing a labor agreement.

The double breasting issues, the decline in UMWA membership and other demands by the UMWA are all related to the needs of the UMWA as an institution. These issues are the primary reasons for the current strikes. They have no impact on the job security or economic welfare of the individual worker.

VIII. The “Job Security” Issue

The principal theme of labor negotiations in the coal industry and other basic industries in 1993 is “job security.” The job security soundbite has been repeated thousands of times by the UMWA, United Auto Workers, United Steelworkers and other AFL-CIO affiliates. It is a tactic designed to gain public support when repeated during a well-designed and professionally executed public relations program.

The BCOA companies have requested that the UMWA

A key reason for the dispute is that the unions and the companies have different definitions of the term “job security.”

return to the bargaining table and end the disruption to the striking workers’ incomes. The so-called job security demands of

A. UMWA Job Security Demands

The stated goals of the UMWA in the 1993 negotiations are job security and job preservation. The union left the negotiating table on May 3 because the BCOA refused to agree to union demands for guarantees that all existing UMWA employees’ jobs would be preserved and that UMWA members will receive full pay for the full duration of a new contract. These job security demands are similar to those being sought by the United Auto Workers and the United Steelworkers in their respective industries, where job guarantee provisions and “golden boy” status (guaranteed weekly minimum pay and transfer rights) were first introduced in collective bargaining.

the UMWA for guaranteed employment levels and guaranteed pay are unrealistic.

The competitive atmosphere and the labor markets in the automobile and steel industries are not comparable to those in the coal industry. First, the auto and steel industries are dominated by a few large producers whose employees are fully unionized. The coal industry is diverse and intensely competitive. Some 2,000 coal producers are predominantly non-union. Unlike the domestic auto and steel industries, the coal industry engages in an increasingly competitive export market. Moreover, there is severe domestic market upheaval due to the Clean Air Act Amendments of 1990, which will result in the closure of dozens of high-sulfur coal mines by 1995. With falling coal prices, significant over-capacity and flat demand for coal (coal production has actually declined 6 percent year-to-date in 1993), few new mines will be built and few new jobs created in the U.S. coal industry. If normal productivity improvements continue, the trend of declining coal mine employment will continue.

In this atmosphere, guaranteed employment levels and guaranteed pay status would create an even larger competitive disadvantage for the BCOA companies. Many mines operating under the NBCWA are currently not competitive; they cannot assume the burden of paying for employees whose mines will close due to the Clean Air Act Amendments and other market forces. Guaranteed employment and pay would also be a direct disincentive to productivity improvements. They would only accelerate the decline of the UMWA sector of the coal industry.

VIII. The “Job Security” Issue

Continued

In response to UMWA concerns, the BCOA companies have offered new job opportunities for UMWA miners—opportunities the UMWA members did not previously have—by obtaining agreement from their parents that future and existing non-union mines would hire active and unemployed UMWA members under certain conditions.

Specifically, the BCOA proposal offered 60 percent of all jobs at new mines of BCOA signatory companies to active and laid-off UMWA members. New non-union mines of affiliated companies, after they have hired the first 40 percent of their work force, would be required to offer three-fifths of the remaining jobs to active and laid-off UMWA miners.

Offering UMWA members jobs at non-union affiliate company mines is a significant concession that goes beyond prior labor agreements. At these new affiliate company mines, it is often necessary to hire the initial 40 percent of the work force from the local area in order to obtain mining and other permits. BCOA has also proposed that at existing non-union mines of affiliated companies, the employer would be required to provide three out of five remaining jobs to active and laid-off UMWA miners after recalling any laid-off local workers. A condition of BCOA's job security provisions is that prior employment rights and obligations be honored.

B. BCOA's Request for Competitiveness

The BCOA companies are seeking reforms to the labor agreement to improve job security. The reforms would make existing mines more cost-competitive and more productive, allowing them to compete for new business and thus to preserve jobs. The reforms are also intended to make construction of new UMWA mines financially feasible, thus creating new jobs.

Specifically, the BCOA companies are seeking revisions to the NBCWA that would permit flexibility in starting times, in job assignments, and in other work rules that impede productivity. Allowing miners to work more than one job and changing their starting times can significantly increase productivity. The companies also want to contract out specified maintenance functions that do not require full-time employees. At this point, the BCOA is not seeking any wage reductions in a new contract.

The BCOA companies have requested that the UMWA return to the bargaining table and end the disruption to the striking workers' incomes. The so-called job security demands of the UMWA for guaranteed employment levels and guaranteed pay are unrealistic. They create a financial burden that can not be accepted by the companies. Only productive, cost-competitive mines can offer real job security in the coal industry. And only with reforms in the NBCWA will such job security become possible.

IX. Report Highlights

1. As of June 11, the strike by the United Mine Workers (UMWA) against member companies of the Bituminous Coal Operators' Association (BCOA) involved some 12,000 UMWA miners. The UMWA is threatening to expand the strike to all BCOA companies. This would affect 42,000 miners under the NBCWA, who produce 28 percent of the nation's coal.
2. As a result of competition from more productive non-union mines, a number of UMWA-represented mines have closed. Employment of UMWA miners under the NBCWA has dropped from 133,000 in 1979 to 42,000 in 1992.
3. BCOA believes that the productivity and work-rule provisions it requested during the current negotiations have been granted by the UMWA to various BCOA competitors under concessionary agreements. The UMWA refuses to provide BCOA with copies of these agreements.
4. Given the UMWA's unreasonable demands, BCOA companies have no choice but to hold out. If traditional violent tactics are used, the public and Congress will no longer support the UMWA. The UMWA is using work slowdowns and selective strikes as well as programs to control public opinion. If it is successful in forming favorable public opinion, the union hopes to force a political resolution of the dispute.
5. Although non-union workers may receive higher real incomes, their employers have lower overall labor costs than UMWA employers. Hence, the union now confronts a lose-lose situation: UMWA employees receive less, but they cost their employers more. Moreover, UMWA miners are less productive than non-union miners because of the labor agreement. The result: UMWA mines do not compete effectively with non-union operations.
6. Health care issues involving both active and retired coal miners have been major causes for the decline in UMWA membership. Non-union mines are able to share health care costs with their active employees and retirees, but pay no health care costs for orphan retirees.
7. The double breasting issues, the decline in UMWA membership, and the organizational relief demanded by the UMWA are all related to the needs of the UMWA as an institution. They have no impact on the job security or the economic welfare of the individual worker.

IX. Report Highlights

Continued

8. The job security demands of the UMWA for guaranteed employment levels and guaranteed pay are unrealistic; by acceding to them, BCOA companies would only accelerate their own decline and the consequent loss of UMWA jobs. Only productive, cost-competitive mines can offer job security. The NBCWA needs to be reformed to make BCOA mines more competitive and UMWA jobs more secure.
9. Higher labor costs, lower productivity due to outmoded work practices, uncontrolled health care costs, a vulnerability to strikes and other factors have made union coal mines uncompetitive in the current coal market.
10. Demands for guaranteed job levels, minimum weekly pay, and automatic UMWA representation will not ultimately provide the job security the union seeks for its members, nor will bargaining delays and strikes reverse the union's declining fortunes as an institution. Conversely, a competitive labor agreement with productivity incentives and more flexible work rules would encourage investment in new UMWA-represented mines and help the union reach its stated goals.