THE ARBITRATION REVIEW BOARD: AN ANALYSIS OF ITS DEVELOPMENT AND IMPACT ON THE ARBITRATION PROCESS IN THE COAL INDUSTRY

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(ABSTRACT)

The Arbitration Review Board (ARB) existed in the bituminous coal industry from 1974 to 1981. Established during the 1974 contract negotiations between the Bituminous Coal Operators Association and the United Mine Workers of America, the ARB represented an effort to obtain consistency in arbitration decisions. The ARB operated as an industry appellate board designed to hear appeals of arbitration awards, and the decisions of the ARB were contractually mandated as industry precedents requiring arbitrator compliance. Although the parties terminated the ARB in 1981, they have continued to incorporate the precedent decisions in subsequent contracts. This study utilizes both a qualitative assessment and an empirical analysis of arbitration decisions to determine the impact of the ARB on the arbitration process in the coal industry.

Structured interviews were conducted with former ARB members, arbitrators, management representatives, and union representatives to gather information with which to

construct a complete historical perspective of the ARB's inception, operation, and termination. A total of 44 individuals were interviewed. The empirical assessment involved a content analysis of 300 arbitration decisions to determine the extent to which arbitrators have adhered to the ARB precedents.

Conclusions of the research suggest that the ARB has had a profound impact on coal industry arbitration. Arbitrators increasingly adhered to ARB decisions during its existence, and have continued to exhibit a high degree of adherence following the ARB's termination. The difficulties encountered in implementing the ARB and the factors contributing to its termination are discussed.

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CHAPTER I

INTRODUCTION

Problem Statement and Purpose

The arbitration of disputes arising from conflicting interpretations of the contractual language in collective bargaining agreements is widely accepted as a cornerstone of the industrial jurisprudence system in the United States. Such rights arbitration provides the parties to the agreement a peaceful and preferable alternative to the industrial chaos that would exist if the parties were forced to rely on their economic strength as the means for dispute resolution. However, despite the widespread acceptance and use of grievance arbitration in the United States, the process is often criticized by advocates and neutrals as falling short of its potential promise.[1] The criticisms of time delay and excessive costs have received much attention in the literature;[2] but an

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[1]Frank Elkouri, "Informal Observations on Labor Arbitration Today", The Arbitration Journal, (Vol. 35, No. 3, September, 1980), pp. 43-45.

[2]See Donald B. Straus, "Charges Against and Challenges For Professional Arbitration", Labor Arbitration - Perspectives and Problems: Proceedings of the Seventeenth Annual Meeting of the National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1964, pp. 216-219; Elkouri, pp. 43-44; Jeanne M. Brett and Stephen B. Goldberg, "Grievance Mediation in the Coal Industry: A Field Experiment", Industrial and Labor Relations Review, (Vol. 37, No. 1, October, 1983), p. 49.

equally valid criticism, the unpredictable nature of arbitration decisions, has been overlooked to a great extent. Critics of arbitration charge that there is little possibility of predicting either the decision of the arbitrator or the rationale supporting the decision.[3] Thus the parties may find themselves in a setting where the inconsistency of arbitrators' decisions provides conflicting signals as to the "true" meaning of a contractual clause. This would likely lead to the submission of additional grievances to arbitration as the parties seek to gain an interpretation favorable to their respective positions.

Confronted with this dilemma of inconsistency, it is understandable that the parties would seek to gain a measure of control over the arbitration process. Such control could reduce the uncertainty surrounding arbitration decisions. This control has been sought through a variety of mechanisms. In some situations the parties have engaged a permanent arbitrator, believing that his[4] familiarity with the total labor-management relationship will allow a more consistent application of

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[3]Robert C. Rodgers and I.B. Helburn, "The Arbitrariness of Arbitrators' Decisions", Industrial Relations Research Association, Proceedings of the Thirty-Seventh Annual Meeting, Madison, Wis: IRRA, 1984), p. 234.

[4]The masculine form is utilized throughout this document only for purposes of convenience.

the agreement across a wide range of circumstances than is possible with the ad-hoc method of arbitrator selection. In other instances, the parties have opted for a panel of arbitrators to obtain this same result while reducing the impact of any one individual arbitrator in establishing the accepted interpretation of the agreement. A more subtle mechanism utilized by the parties to obtain consistency in the arbitration process is the heavy reliance on a very few arbitrators to decide all cases, although there is no formal recognition of an arbitration panel.[5]

Although each of the previously mentioned techniques have been successful in various situations, a more novel approach to addressing the problem of consistency in arbitration decisions is the focus of this study. The 1974 collective bargaining negotiations in the bituminous coal industry between the Bituminous Coal Operators Association (BCOA) and the United Mine Workers of America (UMWA) resulted in the creation of the Arbitration Review Board (ARB). The parties intended this board to provide a consistency in contractual interpretation that had been lacking throughout the history of the industry. Therefore the ARB was established as an appellate board which possessed the power to review arbitrators' decisions upon

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[5]Richard Mittenthal, "Making Arbitration Work: Alternatives in Designing the Machinery", The Arbitration Journal, (Vol. 36, No. 3, September, 1981), pp. 38-39.

the request of either party, or upon its own initiative. The ARB rendered 207 decisions during its existence under the 1974 and 1978 agreements before it was terminated during the 1981 contract negotiations. These decisions by the Board[6] were mandated by the collective bargaining agreement to be industry precedent-setting decisions from the date of the decision. The parties have continued to incorporate these decisions into their subsequent agreements despite the termination of the board. Given the unique nature of this appellate Board, one would think that considerable research would have been directed toward ascertaining the extent to which the Board fulfilled its promise of providing consistency in the arbitration process in the coal industry. However such has not been the case, as there has been scant attention in the industrial relations literature to the establishment, operation, termination, or impact of the ARB. Those scholars that have directed efforts toward a chronical of the events surrounding the inception and termination of the ARB have exclusively limited themselves to qualitative speculation when considering the ARB's impact on arbitration decisions in the industry. There has been no empirical investigation of

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[6]In this work, the phrase "the Board" references the Arbitration Review Board, not the National Labor Relations Board. The term "ARB" is used also to refer to the Arbitration Review Board.

the impact that the Arbitration Review Board has had on the arbitration process in the coal industry, thus the qualitative assessments of the Board's performance have not been confirmed. Further exacerbating the deficiency of research concerning the ARB is the fact that previous research has been conducted in a piecemeal fashion. There is no single document or stream of research which sets forth the entire story of the ARB, from its inception to its termination and continuing with its residual impact on the arbitration process in the coal industry.

This current research study serves a dual purpose. First the environmental forces surrounding the implementation, operation, and termination of the ARB are enumerated, and the operational aspects of the board are examined. The results of this effort provide a more thorough and comprehensive view of the ARB than has been accomplished previously in the literature. Secondly, an empirical analysis of arbitration decisions was conducted to determine the extent to which the ARB precedents impacted, and continue to impact, subsequent decisions of arbitrators in the coal industry. Such an analysis allowed an empirical assessment of the degree to which the ARB has produced consistency in arbitration decisions for the bituminous coal industry.

Significance of the Study

This research effort contributes significantly to the field of industrial relations in several ways. First, given the experimental nature of an intraindustry appellate review board, the need to compile a complete historical record of the ARB is obvious. This study fills the void in the literature that currently exists as to the historical perspective of the ARB. As is usually the case, an alteration in the institutional variables of any labor-management relationship must be evaluated in the historical context of the environmental forces at work in that relationship. It is only through consideration of the context in which the changes occur that one can effectively evaluate the results occurring from such changes. This perspective has been sorely lacking in analyzing the ARB experiment in the coal industry.

Secondly, the historical contextual perspective is critical to those parties who might consider implementation of a similar process in a different industrial setting. A comparison of the structural differences between the industrial relations system in the coal industry and those existing in other settings would be necessary in determining the possibility of successfully implementing such an appellate review system in other industries. Also, the scrutiny provided by this

research effort of those factors contributing to the termination of the ARB provides guidance to future practitioners and researchers as to potential weaknesses in implementing such an approach of attaining consistency in arbitration decisions.

Thirdly, the results of this study are also of immediate significance to the coal industry itself, since there are indications of a renewed interest in reestablishing the ARB during the next round of contract negotiations in 1988. This research effort is significant in its attempt to go beyond any previous analysis of the ARB's impact on grievance arbitration in the coal industry. The speculative analysis that has been conducted previously has not provided the sound empirical evidence necessary to justify the conclusions of the various writers as to the Board's effectiveness. The empirical analysis of arbitration decisions conducted in this study provides a more accurate analysis of the Board's true impact on arbitrator decision-making.

Fourthly, one can maintain that the results of the current analysis can be extended beyond the bounds of the coal industry as they will provide an examination of arbitrator behavior when decisions are subject to appellate review of any nature. Therefore, the behavior of the coal industry's arbitrators subject to ARB review could be likened to the behavior of arbitrators rendering

decisions in those contractual areas that have become subject to judicial review, such as racial discrimination.

Although not the primary focus of this study, a final significant aspect of this endeavor rests in the potential of an arbitration appellate review system to provide a training field for less experienced arbitrators. Should this study determine the ARB did indeed function as a quasi- Supreme Court for the coal industry, the use of less experienced arbitrators could become more palatable to the parties since their decisions could be appealed to the Review Board. Thus, the possible costs of illogical decisions by less experienced arbitrators are greatly diminished in a system employing appellate review of arbitration decisions.

Summary

An industry characterized by inconsistency in arbitration decisions runs the risk of having an excessive amount of arbitration. The parties continually seek to gain contractual interpretations favorable to their own perspective, despite previous arbitration decisions on the issue in dispute. Rather than arbitration providing guidance to the parties should the issue arise in the future, the parties are encouraged to

focus on the selection of an arbitrator sympathetic to their interpretation. Thus the stability normally provided to the labor-management relationship by arbitration is greatly reduced in an environment of inconsistent arbitration decisions.

The bituminous coal industry attempted to address this dilemma of inconsistency in arbitration decisions by creating the Arbitration Review Board during the 1974 negotiations. The ARB was established as a tripartite appellate board that possessed the power to review arbitrators' decisions. The Board's decisions were mandated by the Agreement as industry precedent-setting decisions requiring arbitrator compliance. Despite the subsequent termination of the Board in 1981, the parties have continued to incorporate these decisions into their collective bargaining agreement.

Despite the perceived importance of the ARB to the arbitration process in the coal industry, there has been little research conducted as to the impact of the Board's decisions on coal industry arbitration. Limited qualitative research has been the rule, with no empirical investigation being evidenced. This current research effort attempts to address this deficiency in the literature by providing both a complete qualitative assessment of the Board's operation and an empirical analysis of arbitration decisions to determine the extent

to which arbitrators have adhered to ARB precedents.

This research provides a complete historical perspective of the ARB, enumerating the forces surrounding its creation, operation, and termination. This investigation, when combined with the empirical analysis of arbitration decisions, provides valuable information to the coal industry and to other parties that may consider the implementation of an internal appellate board.

CHAPTER II

THE LITERATURE: A SELECTIVE REVIEW

The Arbitration Process

Arbitration, as defined by Elkouri and Elkouri, is a "simple proceeding voluntarily chosen by parties who want a dispute determined by an impartial judge of their own mutual selection, whose decision, based on the merits of the case, they agree to accept as final and binding."[7] Such arbitration occurs in the industrial relations setting in two different contexts. On the one hand, the parties engaged in collective negotiations who reach a stalemate in bargaining may submit their dispute to arbitration, in which case the arbitration is referred to as "interest arbitration". This form of arbitration is much more common in the public sector than in private enterprise, and is the subject of much debate as to its positive and negative impact on the collective bargaining process. The second variety of arbitration is the arbitration of disputes that arise concerning the interpretation of an existing agreement. This form of arbitration is referred to as either "rights arbitration" or "grievance arbitration", and is the focus of this

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[7]Frank Elkouri and Edna A. Elkouri, How Arbitration Works, 4th Edition, (Washington: The Bureau of National Affairs, 1985), p. 2.

current research. Rights arbitration is much more widely accepted in the industrial setting than is interest arbitration and has become a cornerstone of the industrial relations process. In fact, rights arbitration is provided as the final step in the grievance procedure in approximately 96 percent of all U.S. labor agreements.[8] The widespread acceptance of grievance arbitration in our labor-management relationships is further evidenced by the fact that about 27,000 grievance arbitration cases are conducted each year through the Federal Mediation and Conciliation Service and the American Arbitration Association.[9] In addition, there are a number of labor agreements in which the parties select their own arbitrators independent of the FMCS or AAA.

From a historical perspective, grievance arbitration in the United States followed the development of collective bargaining in various industries. It would seem logical that the parties to a negotiated agreement would seek the best possible mechanism to resolve conflicts arising as to interpretation of that agreement.

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[8]Characteristics of Major Collective Bargaining Agreements, July 1, 1976 (U.S. Department of Labor Bulletin 2013, 1979), p. 82.

[9]Steven Briggs and John Anderson, "An Empirical Investigation of Arbitrator Acceptability," Industrial Relations, Vol. 19, no. 2 (Spring, 1980), pp. 163-164.

However, some of the earliest agreements did not provide for arbitration of disputes. Differing interpretations frequently resulted in power struggles where the party having the greatest economic strength most often prevailed. After experiencing the futility of resolving disputes in this fashion, labor and management were often eager to embrace a procedure that sought a more orderly solution to the dispute.

Grievance procedures culminating with binding arbitration were found in the anthracite coal, railway, and clothing industry during the early part of the twentieth century.[10] But it was not until World War II that grievance procedures and arbitration became the norm for resolving industrial disputes. This was a direct result of the creation of the War Labor Board and its subsequent intervention in collective bargaining and contract administration. Created by executive order in 1942, and given statutory authority in 1943 by the War Labor Disputes Act, the Board resolved 20,000 labor dispute cases during the emergency period of the war. The Board's policy requiring agreements to contain a clause providing for arbitration of future disputes had a dramatic impact on the extent to which arbitration was

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[10]Thomas A. Kochan, Collective Bargaining and Industrial Relations: From Theory to Policy and Practice, (Homewood, Ill.: Richard D. Irwin, Inc., 1980), p. 387.

utilized in the industrial relations system.[11] The impact of the War Labor Board is best seen in the statistic that fewer than 8 to 10 percent of labor agreements contained arbitration clauses in the early 1930's, while 73 percent of all contracts embodied arbitration provisions by 1944.[12] The War Labor Board obviously cannot be given all of the credit for such a dramatic increase. However, the Board's policies laid the foundation for the widespread use of grievance arbitration that is evidenced in today's collective bargaining agreements.

The arbitration process has experienced an evolutionary development in the United States in form as well as extent of use. The primary focus of the limited pre-New Deal arbitration was on "consensual arbitration". Consensual arbitration was a process where the arbitrator first attempted to mediate the dispute between the parties and resorted to the use of his arbitral powers only as a last resort. Killingsworth and Wallen have defined consensus arbitration as "a system for resolving all problems that arise during the life of a contract, utilizing a technique of continuous negotiation, and centering on a mediator who is vested with the reserved

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[11]Elkouri and Elkouri, p. 13.

[12]Major Collective Bargaining Agreements: Arbitration Procedures, (U.S. Department of Labor Bulletin 1425-6, 1966), p. 5.

power to render a final and binding decision."[13] Thus the arbitrator approached the dispute from the perspective of a problem-solver who was free to resolve the issue on the basis of the essence of the agreement rather than the letter of the contract. In direct contrast with this approach to arbitration is the judicial approach that developed during and shortly after the War Labor Board period. The judicial approach does not allow the arbitrator the flexibility inherent in the consensual approach and limits his jurisdiction to interpreting and applying the agreement. The arbitrator loses the ability to function as a mediator of grievances who has the authority to develop his own investigation of the issue and determine his own conclusion as to whether industrial justice has been attained.[14] Quite the opposite, the parties expect the arbitrator to refrain from imposing personal judgments as to the rightness or wrongness of a contract provision. He must simply apply the provision as the parties intended during negotiations of the contract. It is immaterial whether the arbitrator

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[13]Charles C. Killingsworth and Saul Wallen, "Constraint and Variety in Arbitration Systems", Labor Arbitration - Perspectives and Problems: Proceedings of the Seventeenth Annual Meeting of The National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1964, p. 60.

[14]Richard L. Kanner, "The Dynamics of the Arbitration Process", The Arbitration Journal, (Vol. 39, No. 2, June, 1984), p. 60.

approves or disapproves of the parties' intent for his is a role of judicial interpreter, not that of a legislator seeking to impose his own concept of right and wrong. As stated by the Supreme Court in the case of United Steelworkers of America v. Enterprise Wheel & Car Corporation: "An arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice.[15]

According to Prasow and Peters, the transition from consensual to judicial arbitration resulted from three factors. The first of these was the growth of the labor movement during the New Deal era, from a low of 3 million in 1933 to 13 million by 1946. Much of the growth occurred in the mass production industries critical to the national interest. The sheer numbers of agreements, and workers covered by those agreements, called for arbitration decisions that would provide future guidance to all parties as to the "true" meaning of the clause in dispute, rather than decisions that revolved around the personal values of the arbitrators rendering decisions. Secondly, the economic strength unions secured from their membership gains allowed them to become more aggressive in seeking to infringe on those areas of the employment

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[15]United Steelworkers v. Enterprise Wheel & Car Corporation, 363 U.S. 593, 597 (1960).

relationship that had previously been the exclusive domain of management. Management attempted to blunt this aggressiveness by requiring specific contract language for any contractual subjects that they had agreed to share with the union. Unions countered with their own specific language, thereby resulting in more detailed agreements than had previously been the norm. Obviously, the more specific the language of the contract, the less discretion remained for an arbitrator to invoke his personal values. The third factor was the emphasis by a number of eminent arbitrators toward writing opinions that would serve as standards for the parties in their day-to-day interaction. In effect, this created a body of "common law" for the participants.[16]

Proponents of grievance arbitration cite its critical role in insuring industrial peace in the workplace. For the union, the right to have its complaints adjudicated by an impartial third party is the "quid pro quo" of an agreement to refrain from strike activity during the life of the contract. Likewise, for management, the inclusion of an arbitration provision is essential if they are to relinquish their perceived right to effect unilateral changes in the work rules and

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[16]Paul Prasow and Edward Peters, Arbitration and Collective Bargaining: Conflict Resolution in Labor Relations, 2nd Edition (New York: McGraw-Hill, 1983), pp. 13-14.

conditions of the employment arrangement. These perceived trade-offs may seem irrelevant to those not familiar with the perceptions of American labor toward the right to strike, or American management's strong sentiments toward management rights. Labor views the right to strike as being an inalienable freedom of workers in a democratic society. Conversely, management has traditionally considered control of the workplace to be a natural extension of the property rights they enjoy as the owners of capital. One must understand the opportunity cost that each party perceives as being expended in exchange for an arbitration clause to truly understand the critical role of grievance arbitration in the United States. Without this mechanism to facilitate the administration of negotiated agreements, the American industrial relations scene would be best described as a "battleground of industrial warfare" in which chaos would replace peaceful order as the chief characteristic.[17]

According to Kochan, if grievance arbitration is to effect the peaceful resolution of disputes, it must meet the needs of three constituencies. In the first place, the collective interests of the employer and labor unions

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[17]George W. Taylor, "Effectuating the Labor Contract Through Arbitration", The Profession of Labor Arbitration: Selected Papers from the First Seven Annual Meetings of the National Academy of Arbitrators, 1948-1954, (Washington: The Bureau of National Affairs, Inc., 1957), p. 20.

must be accommodated. Secondly, arbitration must insure individual rights for the worker, thereby promoting industrial justice. And lastly, the arbitration process should serve the best interests of society by substituting industrial peace for industrial strife, and by preventing industrial disputes from overloading the judicial system.[18]

Abernethy considered a similar perspective when assessing the extent to which arbitration has fulfilled the promise anticipated by those instrumental in it widespread adoption. He holds that arbitration promised a peaceful alternative to industrial warfare, and has convincingly delivered the desired product in this area. He also emphasizes the role of arbitration in providing society a greater industrial stability that has enhanced productivity by allowing production to continue while disputes are resolved. In addition, the individual worker has benefited from the impartial adjudication of his complaints in a system that provides him with an equal voice to that of management. Also to be considered is the freedom of the parties to effect their own particular grievance and arbitration system. They can fashion a system that best serves their unique needs, as opposed to a uniform system imposed by government in all

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[18]Kochan, pp. 385-386.

labor-management relationships.[19] A different perspective for assessing arbitration is provided by Chamberlain and Kuhn as they discuss the basic functions that must be performed by an effective grievance and arbitration system. These authors maintain that a good system will provide consistent interpretation of the agreement on a day-to-day basis, resolve disputes over interpretations, allow for adaptation of the agreement to changing circumstances, and modify the agreement to accommodate the needs of the local parties.[20]

One of the outstanding features of the grievance arbitration process as it has developed since the War Labor Board period has been the ability of the process to keep the great majority of cases out of the courts. Advocates of arbitration hold that there are several advantages of settling industrial disputes by arbitration rather than through litigation. The most often cited advantages concern the time savings and monetary savings resulting from arbitration. However, arbitration has been increasingly criticized in recent years as being

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[19]Byron R. Abernethy, "The Presidential Address: The Promise and the Performance of Arbitration: A Personal Perspective", Proceedings of the Thirty-Sixth Annual Meeting of the National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1983), pp. 9-11.

[20]Neil W. Chamberlain and James W. Kuhn, Collective Bargaining, 2nd Edition (New York: McGraw-Hill, 1965), p.141.

deficient in these areas. But even the most ardent critics of the process will not suggest that it has become as painfully slow or expensive as litigation. In arbitration, unlike litigation, the parties control the process and can therefore make adjustments that will better facilitate the settlement of disputes in both a timely and inexpensive fashion. The use of expedited arbitration in the steel industry, as well as others, and grievance mediation in the bituminous coal industry offer examples of the parties having undertaken such experimental modifications with successful results.[21]

Another advantage enjoyed by arbitration over litigation is the adjudication of the dispute by a party familiar with the industrial setting in which the dispute arises. Courts are often not aware of this industrial setting, thus are more likely than arbitrators to render decisions which may be difficult for the parties to live with on a day-to-day basis.[22] The Supreme Court addressed this issue in the United Steelworkers v. Warrior & Gulf Navigation Co. decision :

> The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of the courts. The

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[21]Charles C. Killingsworth, "Arbitration Then and Now", Proceedings of the Twenty-Fifth Annual Meeting of the National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1972), pp. 11-27.

[22]Elkouri and Elkouri, pp. 7-8.

> parties expect that his judgement of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgement whether tensions will be heightened or diminished. For the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs. The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.[23]

Thus it easily can be seen that the arbitration of labor disputes was viewed by the Supreme Court as a product and province of the private contractual relationship between labor and management. However, this certainly is not to say that arbitration is totally unaffected by the law. But there has been traditionally a reluctance by the courts to intervene in disputes over those subject areas covered by the labor agreement and considered to be the province of the arbitrator.

To understand completely the role of the law in the arbitration process, one must review the major legislation and court decisions that have created the current setting. Although the railway industry is not the focal point of this study, a brief mention of legislation enacted for that industry is necessary at this point. The Federal Arbitration Act of 1888 called

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[23]United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, (1960).

for the compulsory arbitration of railway labor disputes, but was never used and was replaced by the Erdman Act of 1898 which provided for the voluntary arbitration of disputes in the railway industry.[24] The use of arbitration for the resolution of grievances was further enhanced in this industry in 1926 as the Railway Labor Act was enacted as a comprehensive statute governing all aspects of labor relations for railways.[25] Despite this extensive legal support for the arbitration of grievances in the railway industry, it was not until the passage of the Labor-Management Relations Act of 1947 (Taft-Hartley) that comparable support was provided for the private sector at large. Section 203 of the Act stated that the most desirable method of settling industrial relations disputes was through a final adjustment of the disputes by a method agreed upon by the parties. This provided tacit support to grievance arbitration when one considers the environment in which such a statement was promulgated. Given the close proximity in time of the Taft-Hartley Act with the War Labor Board directives to include arbitration provisions in new agreements, there is little doubt that arbitration was the mechanism

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[24]David Twomey, Labor Law and Legislation, 7th Edition (Cincinnati: South-Western Publishing Company, 1985), p. 334.

[25]Jacob J. Kaufman, Collective Bargaining in the Railroad Industry, 2nd Edition (New York: Russell & Russell, 1973), p. 78.

referred to in the Act.

A more direct statement of support for the use of grievance arbitration was to be forthcoming in a court decision based on Section 301 of the LMRA. Section 301 authorizes suits in federal courts for violation of contracts between an employer and a labor organization representing employees in an industry affecting interstate commerce. A controversy existed as to whether this section of the Taft-Hartley Act granted substantive authority to the federal courts to intervene in labor-management disputes. Opponents of the judicial intervention held that this section of the law was simply a procedural formality that allowed intervention, but limited the federal courts' role to the application of relevant state law when deciding the case. On the other hand, proponents of increased federal court involvement asserted that the provision allowed for the application of federal laws when deciding a case. The issue was ultimately resolved in the 1957 Supreme Court decision in Textile Workers of America v. Lincoln Mills of Alabama when the Court decided that agreements to arbitrate disputes over conflicting contract interpretations were enforceable in federal courts.[26]

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[26]Charles J. Morris, "Twenty Years of Trilogy: A Celebration", Proceedings of the Thirty-Third Annual Meeting- National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1980), pp. 338-341.

The Supreme Court followed the Lincoln Mills decision with a group of three decisions, all rendered on June 20, 1960, that provided an even greater degree of integrity for the arbitration process. These decisions, commonly referred to as the "Steelworkers' Trilogy" or simply the "Trilogy", all involved the United Steelworkers of America and, taken collectively, provide unmistakable proof that arbitration enjoyed the full support of the Supreme Court. In the Warrior & Gulf Navigation case, the issue of arbitrability was decided, with the Court finding that the parties to an agreement must arbitrate a disputed issue unless they specifically exclude the issue from arbitration. The Court stated that an issue must be arbitrated "unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[27] This decision removed one course of action previously available to employers when confronted with a union demand for arbitration, that of seeking judicial approval that the issue in question was nonarbitrable. The Court was careful to point out that their decision in no way hindered the authority of private arbitrators to dismiss grievances on the basis of their nonarbitrability

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[27]United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, (1960).

under a contract. Thus the Court reaffirmed the power of the private arbitrator, while at the same time reducing the parties ability to seek redress through the courts.[28]

The second case of the Trilogy, American Manufacturing, dealt with the issue of arbitrability from a different perspective than did the Warrior & Gulf decision. Involved in this case was the issue of whether a judge could dismiss an employee's grievance as lacking merit. A lower federal court ruled that the grievance in question was "a frivolous, patently baseless one, not subject to arbitration."[29] The Court reversed the lower court, holding that federal courts have no power to evaluate the merits of a grievance, and that the determination as to the merits of a grievance rests solely with the private arbitrator. The Court stated that "when the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which is entrusted to the arbitration tribunal."[30]

The final decision of the Trilogy, the Enterprise

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[28]Janet G. Yedwab, "The "Essence" of the Labor Arbitration Process: A New Focus", The Arbitration Journal, (Vol. 39, No. 4, December, 1984), p. 29.

[29]United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960).

[30]Ibid.

Wheel and Car Corporation case, dealt with a situation where a lower federal court reversed the decision of an arbitrator on the grounds that the court did not believe the arbitrator's decision to be "sound" under the labor agreement. The Supreme Court in reversing the lower court and ordering full enforcement of the arbitrator's award stated:

> Interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitration decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.[31]

As a result of this decision, neither the union nor management can use the courts to set aside an arbitrator's award. Thus the integrity of the arbitration process is preserved.

The Trilogy cases greatly strengthened the arbitration process in the United States by providing the legal basis for the process that had been lacking previously. Although the U.S. system of grievance arbitration is still a voluntary system, the voluntary nature now refers to the initial choice to include an arbitration clause in the agreement. No longer can the parties maintain that the voluntary consent necessary for the system to function allows them a choice as to whether

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[31]United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U.S. 593 (1960).

they will comply with an arbitrator's decision. A stronger meaning is now given to that phrase found in many labor agreements, "The arbitrator's decision shall be final and binding on all parties", for the courts stand ready not to interfere with the arbitrator's award but to fully enforce the award.[32]

This legal position has developed by which the issuance of an arbitration award generally prevents subsequent court action on the merits of the original grievance. However, there have been several important exceptions in which the courts have set aside the arbitrator's award, thus bringing into question the finality of labor arbitration. In 1974, the Supreme Court decided in the case of Alexander v. Gardner-Denver that an arbitration award is not final and binding when Title VII of the Civil Rights Act is involved. This decision allows an employee to pursue his rights under the labor agreement by seeking redress for his grievance through the grievance procedure. But, if he loses at arbitration, he may still seek relief in the federal courts if his grievance involves an alleged violation of Title VII rights.[33] The Supreme Court extended this

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[32]Walter Fogel, "Court Review of Discharge Arbitration Awards", The Arbitration Journal, (Vol. 37, No. 2, June, 1982), p. 34.

[33]Aubrey R. Fowler, Jr., "Arbitration, the Trilogy, and Individual Rights: Developments Since Alexander v. Gardner-Denver", Labor Law Journal, vol. 36, no.3 (March,

policy in 1981, in Barrentine v. Arkansas-Best Freight System in finding that an arbitration decision involving rights created by the Fair Labor Standards Act may also be reviewed by the federal courts. The combined impact of these two cases is a blow to arbitration finality and seems to imply that an arbitration decision that deals with an issue falling within the scope of any federal law is not final and binding on the parties.[34]

The finality doctrine was also modified by the 1976 Supreme Court decision in Hines v. Anchor Motor Freight. The court held that the federal courts are empowered to review an arbitrator's award when the union has failed to provide fair representation to the employees involved in the arbitration proceedings.[35] The Court further extended the reasoning employed in the Anchor Motor Freight case when, in 1983, they held in Bowen v. Postal Service that not only did the arbitration award lack finality in a case involving unfair representation, but the union can be forced to share in any back pay

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1985), p. 173.

[34]Bernard F. Ashe, "Arbitration Finality: Myth or Reality?", The Arbitration Journal, vol. 38 (December 1983), p. 43.

[35]Theodore J. St. Antoine, "Judicial Review of Labor Arbitration Awards: A Second Look at Enterprise Wheel and its Progeny", Proceedings of the Thirtieth Annual Meeting- National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1977, p.45.

settlement due the employee.[36]

The lower federal courts have also refused to uphold arbitration awards in those cases where the arbitrator has not adhered to the "essence" standard of the Enterprise Wheel & Car decision. The "essence" standard requires that the arbitrator's award draws its essence from the contract and is not a product of his personal value system.[37] Stephens, in reviewing those cases in which an arbitrator's award was reversed, found that the most common reason for an award to be reversed by a court was that the arbitrator exceeded the authority granted to him by the labor agreement. The next most frequently cited rationale for overruling an arbitrator's award was that the award violated a law or public policy.[38]

Although diminishing the concept of arbitration finality in the previously mentioned decisions, the Supreme Court also rendered a decision in 1981 that served to strengthen the finality doctrine. The Court's decision in United Parcel Service v. Mitchell upheld the state of New York's 90-day statute of limitations for actions seeking to vacate arbitration awards. The Court endorsed the use of a short statute of limitations, since

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[36]Twomey, p. 343-347.

[37]Elkouri and Elkouri, p. 31.

[38]Elvis C. Stephens, "Why Courts Overrule Arbitrators' Awards", Labor Law Journal, (February, 1985), pp. 116-117.

this allows both parties to maintain confidence in the grievance arbitration process.[39]

The Supreme Court has provided further support for arbitration finality in supporting the National Labor Relations Board (NLRB) policy of deferring to arbitration cases that, although containing some degree of unfair labor practices, dealt with contractual provisions. The NLRB, in the 1955 Spielberg Manufacturing Co. decision, had maintained that the arbitrator could decide not only the contractual issues in the case but was capable also to determine the unfair labor practice issue. The NLRB then followed with the 1971 Collyer Insulated Wire decision that required the parties to go through arbitration before seeking an NLRB determination of an unfair labor practice. Although these decisions have been criticized on the grounds that the NLRB abdicated its statutory responsibilities, the Supreme Court endorsement of this NLRB policy has made arbitration a more critical tool for the settlement of disputes.[40] The process of grievance arbitration is rooted very strongly in the industrial relations system in the United States.

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[39]United Parcel Service v. Mitchell, 451 U.S. 56 (1981).

[40]Charles J. Morris, "NLRB Deferral to the Arbitration Process: The Arbitrator's Awesome Responsibility", Proceedings of the Thirty-Seventh Annual Meeting- National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1984), pp. 54-58.

The Historical Development of Labor Relations and Collective Bargaining in the Coal Industry

Although labor relations developments in the bituminous coal industry received adequate attention from the early industrial relations scholars, this has become an industry largely ignored by the present industrial relations academic community. The decline in union representation in the industry during recent years, falling from 70% in 1972 to 44% in 1981, no doubt is responsible for some of this neglect.[41] But the more plausible explanation is that this industry has been perceived by modern academics as embracing primitive principles of industrial relations that are no longer relevant in today's society. The highly adversarial nature of the labor-management relationship in the coal industry is much more indicative of a labor scene from the 1930's than from the 1980's, as is the violence that regularly occurs in this industry. The hostile nature of the physical work environment, and its role in shaping much of the industrial relations climate, is not understood by many. Also, the work locations are usually geographically isolated and are not easily accessible to researchers. Unlike other industrial settings, such as

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[41]William H. Miernyk, "The 1981 Coal Strike: A View from the Outside", Labor Law Journal, (August, 1981), pp. 575-576.

factories, where a researcher's experience in dealing with one setting can be easily transferred to another setting, the coal mining environment and culture are unique in industrial relations. These factors combine to create a climate where many researchers feel that the effort necessary to become familiar with the coal industry is hardly worth the potential payoff, when compared to other possible research settings.

However, some notable research has been conducted in the coal mining industry in recent years. Navarro examined the determinants of union bargaining power in the coal industry from 1945-1981, finding the declining percentage of coal production controlled by the United Mine Workers of America (UMWA) as the most critical power factor in recent years. To a lesser extent, the level of coal consumption and industry profits have also impacted the bargaining power of the union.[42] Field research investigating the grievance mediation experiment in the industry was conducted by Goldberg and Brett. They found that eighty-nine percent of the 153 grievances taken to mediation during the experiment were resolved before arbitration.[43] These same researchers investigated the incidence of wildcat strikes in the industry, finding

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[42]Peter Navarro, "Union Bargaining Power in the Coal Industry, 1945-1981", Industrial and Labor Relations Review, vol. 36, No. 2 (January, 1983).

[43]Brett and Goldberg, pp. 54-55.

that a high strike level existed even at those locations having a high arbitration rate.[44] The most comprehensive piece written in recent times on the nature of industrial relations in the coal industry is that by Miernyk, who contributed the chapter on coal to the Industrial Relations Research Association Series' volume on contemporary collective bargaining in the United States.[45]

Historically, the coal industry has experienced pronounced cyclical action in production and employment, creating a highly unstable environment. The growth of the coal industry paralleled the growth in the industrialization of the United States. Although coal mining has been conducted in this country since the mid-1800's, the most rapid growth in the industry occurred between 1890 and 1930. Unionization attempts were commonplace during this period, since the United Mine Workers of America was formed in 1890. The formation of a lasting labor organization in the bituminous coal

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[44]Jeanne M. Brett and Stephen B. Goldberg, "Wildcat Strikes in Bituminous Coal Mining", Industrial and Labor Relations Review, vol. 32, No. 4 (July 1979), pp. 481-483.

[45]William H. Miernyk, "Coal", Collective Bargaining: Contemporary American Experience, edited by Gerald Somers (Madison, Wis.: Industrial Relations Research Association, 1980), pp. 1-47. A thorough review of this work, supplemented by other pertinent research where necessary, will provide the reader with a full appreciation for the developments of industrial relations in the coal industry.

industry followed several earlier unsuccessful attempts at organization. The most notable of these was the 1873 formation of the Miners' National Association of the United States. Following a brief period of success, the organization's locals lost a series of strikes incited by wage reductions that had resulted from overproduction. Although there was no miners' union during the period between the Miners' National Association and the UMWA's formation in 1890, many miners belonged to the Knights of Labor in the interim period or maintained independent locals.[46]

The initial philosophical orientation of the UMWA was significantly influenced by socialism. The socialists were never successful in gaining prominence in the national administration of the UMWA, but they exerted a considerable influence in some of the district unions. Most notable of these districts was the Illinois district, which was the most powerful and largest state-wide affiliate. The early UMWA membership was dominated by immigrants from Britain who brought with them the deeply-held commitment to worker political parties that had characterized the British labor movement since the 1830's. The strongest evidence of this socialist influence on the UMWA is found in an examination of the original UMWA constitution, with over fifty percent of

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[46]Ibid., p. 18.

the original planks involving demands for legislation.[47]

There are several explanations as to why the socialists were able to exert this strong influence during the UMWA's early years. In the first place, the geographical isolation of many of the mining communities, combined with the tremendous political and economic clout of the coal operators, placed the miners in a position of dependency on the operators. The basic necessities of life were totally controlled by the company, with the "company house" and the "company store" providing clear signals of the operator's superior position. The miners' perception that this superior position often led the operator to exploit the employment relationship to the extreme partially accounts for the UMWA's receptiveness to the socialist position.[48]

Another source of discontent for miners was the extremely hazardous working environment in which they found themselves. Fatalities and injuries were commonplace in the mining industry, as evidenced by the 10,000 miners per year injured or killed during the 1890's and the annual average fatality rate of 1594 during the first three decades of the 1900's. Safety legislation was not enacted until well after 1900, with

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[47]John Laslett, Labor and The Left (New York: Basic Books, 1970), pp. 192-193.

[48]Ibid., p. 195.

lax enforcement of such legislation causing miners to question the wisdom of relying on the legal system to protect them. Frequent major disasters resulting in the loss of hundreds of lives created a bitterness toward the operators, who were viewed as indifferent to the plight of the miners.[49]

Despite this early experimentation with socialistic philosophy, the UMWA never fully embraced the positions espoused by the radical socialists within their membership. The majority of members viewed the socialists as extremists, and the national leadership continued to resist the placement of socialists in important union positions. The patriotic fervor within the UMWA created by the entry of the United States into World War I greatly reduced the socialistic influence in the UMWA.[50]

The UMWA experienced rapid growth in its first year, but the economic panic of 1893 reduced its strength dramatically. However, following a recovery in the general economy the membership of the union tripled during 1897. In 1898, a joint conference of miners and operators resulted in the acceptance of collective

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[49]Keith Dix, Work Relations in the Coal Industry: The Handloading Era, 1880-1930, (Morgantown: West Virginia University Institute for Labor Studies, 1977), pp. 67-77.

[50]Ibid., p. 221.

bargaining, in principle, in the central competitive fields. The central competitive fields embraced Illinois, Indiana, Ohio, and western Pennsylvania. The agreement reached with operators of this region established "the basic eight-hour day, a uniform wage scale for daymen, and tonnage rates at basing points in each area for the men who actually mined the coal."[51] This agreement, known as the Central Competitive Field Agreement, was renegotiated at intervals ranging from seven months to three years until 1927 when it collapsed.[52]

Despite achieving success in the central competitive fields, the UMWA realized that this bargaining structure was threatened by the lack of union organization in West Virginia. Coal operators in West Virginia enjoyed the position of being able to sell in either the mid-western or eastern markets. They held an additional advantage in that much of the mining in West Virginia was cheaper than in the central competitive fields since it was possible to extensively use drift mine methods. The UMWA thus mounted an intense organizing campaign in West Virginia, which proved successful in that eighty new locals

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[51] Ibid., p.20.

[52] Miernyk, "Coal", p. 20.

embracing five thousand members were established by 1902.[33] Although contracts followed in some instances, many operators responded to these organizational successes by refusing to bargain with the UMWA, and aggressively sought to offset its impact. Armed guards were hired to evict miners from their company-owned housing, evictions often accompanied by violence from both sides. The violence which occurred in the West Virginia labor wars during the first three decades of the twentieth century is often cited as being among the worst in labor history. This violence has had a lasting influence on the industry, in that it established the labor relations climate in the industry. The use of violence in settling disputes over contractual negotiations or administration of agreements has been commonplace in this industry, and the hostility and distrust generated by such actions have negatively impacted the labor climate.

The UMWA was fortunate during its early years to have strong, effective leadership. John Mitchell, serving as president from 1899 until 1908, set forth the most effective argument of any labor leader of his time as to why individual bargaining by workers was an

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[33]Fred A.Barkey, "The Rise and Decline of the UMWA in West Virginia: 1890-1930", The Coal Life Project, (Charleston: State of West Virginia, 1980), pp.1-4.

inferior method to collective action in improving their working conditions. The next president of the UMWA to command national recognition equal to that of Mitchell was John L. Lewis, who held the presidency from 1919 to 1960. Lewis proved to be not only an effective leader of the UMWA, but was also the leader of the movement within organized labor that advocated widespread adoption of industrial unionism. This effort ultimately led to the UMWA's departure from the American Federation of Labor, with Lewis and the UMWA leading the formation of the Congress of Industrial Organizations in 1935.[54] Union membership grew dramatically following the passage of the National Industrial Recovery Act in 1933, and the UMWA was one of the prime benefactors of this growth. Within one year after the passage of the NIRA, UMWA membership grew from 100,000 to 400,000 miners.[55]

The decade of the 1940's saw a steady rise in coal production that culminated with a new record of 630 million tons in 1947. However, 1948 saw the beginning of yet another down cycle for coal production, created in large part by the emergence of cheap oil and natural gas as alternatives to coal. Lewis initiated discussions

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[54]Cecil Carnes, John L. Lewis: Leader of Labor (New York: Robert Speller Publishing Corp., 1936), pp. 247-55.

[55]"A Look into Our Union's Past," United Mine Workers Journal: UMWA 84th Anniversary Special History Issue, January 16, 1974, p.7.

with the coal operators concerning the industry's response to this stiffened competition. At this point Lewis encouraged the operators to mechanize the industry, despite the severe negative impact such mechanization would have on employment in the industry and membership in the UMWA. Few labor leaders could become such an outspoken advocate of a policy that promised to cut their membership in half. But the active role Lewis played in the mechanization of the coal industry is yet another indication of the tremendous power he wielded, both within the union and the industry at large. Active membership in the UMWA declined from 416,000 in 1950 to 180,000 in 1959. It should be noted, however, that not all of Lewis' power resulted from his charismatic leadership and support from the rank-and-file. Lewis extensively utilized the UMWA constitutional grant of authority allowing the union president to place local unions in trusteeship when he felt such an action best served the interests of the international union. Regardless of the sources of his power, Lewis definitely possessed the necessary power to aggressively support the mechanization of the industry. As a result of mechanization, Lewis sought a pension system for those miners too old to start a career in a different occupation. He achieved this pension system during the 1950 negotiations which resulted in the first national

agreement in the history of the bituminous coal industry.[56]

The 1950 agreement signaled a new era for collective bargaining in the coal industry. The operators had formed the Bituminous Coal Operators Association (BCOA) to represent their interests in bargaining. It is important in understanding collective bargaining and contract administration in the coal industry to realize that the BCOA lacks the unity that is found in employer associations in other industries. The association has always been a loose federation with substantial conflict among the interests of its members.[57] In many cases, the BCOA experiences as much difficulty in reaching an internal consensus as does the UMWA. There is very much a political atmosphere surrounding the deliberations of both parties in the coal industry. In fact, there have been defections from the BCOA in recent years by companies who feel that they can negotiate a better contract individually than they receive from the BCOA-UMWA negotiations.

The two decades following the 1950 agreement were relatively peaceful by the coal industry's standards, and

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[56]Miernyk, "Coal", pp. 25-29.

[57]Rolf Valtin, "The Bituminous Coal Experiment", Labor Law Journal, (vol. 29, No. 8, August, 1978), p. 470.

marked a period of orderly decline in both coal production and employment. This period also saw the end of the Lewis era in the UMWA, as John L. Lewis retired in 1960 from the presidency of the union. Lewis was followed by Tom Kennedy, who served as president for three years until his death in 1963. Upon Kennedy's death, Tony Boyle became the leader of the UMWA and began a nine-year tenure marked by corruption and violence.[58]

Boyle assumed leadership of the UMWA at a time when coal production was beginning to recover from the depressed conditions of the fifties. One would expect this period to have been a time when the union could have recovered from some of its earlier losses resulting from mechanization. However, Boyle proved to be an ineffective president. He was unsuccessful in securing commitments from the companies to improve the safety and health environment in the mines. In response to Boyle's weak leadership, a dissident group of miners, known as the Miners for Democracy (MFD), emerged during the sixties. This group was to have a profound impact on the internal operations of the UMWA and on the collective bargaining process in the coal industry. The leader of this reform movement was Joseph "Jock" Yablonski who, in 1969, announced his intent to challenge Boyle for the

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[58]Miernyk, "Coal", p.29.

union's presidency. Tensions within the union increased dramatically when Yablonski, together with his wife and daughter, were murdered on December 30, 1969 in their Clarksville, Pennsylvania home.[59] Boyle was accused of having ordered the murders, but remained in office as he denied any involvement.

Arnold Miller replaced Yablonski as the leader of the reform movement and defeated Boyle in the 1972 election. Boyle was eventually implicated in the Yablonski murders by the men convicted for the slayings, and he was convicted and imprisoned for his role in the conspiracy to kill Yablonski. Miller, on the other hand, set about implementing democracy in a union that had long been ruled by oligarchical principles. The change implemented by the Miller forces that had the greatest impact on union governance was the implementation of rank-and-file ratification of proposed contracts.[60] This change was created by alterations in the UMWA constitution made during the 1973 convention. Hailed at the time as a measure long overdue for the UMWA, this provision was to wreck havoc in future contract negotiations. Although the 1974 negotiations were not adversely affected, the rejection of the first proposed

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[59]Paul J. Nyden, Miners for Democracy: Struggle in the Coal Fields, (Ph. D. dissertation, Columbia University, 1974, pp. 91-92.

[60]Miernyk, "Coal", p. 31.

contract in the 1977-78 negotiations and the 110 day strike during these negotiations have been cited as primary causes of the reduced demand by foreign buyers for UMWA-mined coal. The problems surrounding these negotiations followed a period of widespread wildcat strikes in the coal industry during the 1974 agreement. The general feeling in the industry, and in the coal markets, was that the 1977-78 negotiations needed to be completed without a prolonged strike in order to indicate stability in the industrial relations climate in the industry. This stability was vitally necessary if buyers, particularly the international buyers, were to have confidence in the industry's ability to provide coal to meet their demands.[61]

The viability of a contract ratification process was never criticized by management or other industry observers. But the manner in which this process was implemented created both criticism and a belief that the unionized coal industry in the United States lacked the industrial relations stability necessary to remain a dependable supplier of coal. The union leadership never established the communication with the rank-and-file that was needed for the membership to understand the reasons

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[61]These observations are based on numerous conversations the investigator has conducted with coal company managers, union members and officials, and those involved in buying or selling coal.

for and implications of proposed contract changes. Suspicion and conjecture were much more common than trust and sound reasoning as rumors ran rampant through the coal fields that the companies had been successful in deceiving union officials into accepting a contract that represented a major step backward for the UMWA. Comparisons of the contract eventually accepted and the first proposed contract reveal little difference between them and does not support the belief that the companies won major concessions from the union. The problems associated with the rejection of the initial contract can be traced to an uninformed membership that reacted irrationally to proposed contract changes that had little impact on the existing balance of power in the industry. Much of the responsibility for this situation must be borne by the UMWA leadership who had neglected to establish an internal system of communications that would allow members to receive accurate and timely information on the progress and content of negotiations.

The industry has not yet recovered from the economic decline of the late seventies and finds itself today in a depressed condition that has resulted in a new wave of layoffs and mine closings. The labor-management relationship in those mines that continue to operate, however, has improved dramatically as labor and management have engaged in cooperative efforts to address

the problems confronting the industry. Finally, this industry seems to have awakened to the fact that workers and owners have a common interest that far outweighs the conflicting interests between the two. The necessity to insure the financial health of the companies has caused the UMWA to accept significant modifications to restrictive work rules, and to cooperate with the companies to seek new methods of increasing productivity. The observer interested in renewed growth and prosperity for the coal industry can only hope that this spirit of cooperation is not a case of "too little, too late", and that this same spirit can continue should the economic crisis in the industry be resolved.

The Arbitration Review Board

The Arbitration Review Board was established during the 1974 negotiations as an appellate review board that would review arbitration decisions when requested by either party. The ARB represented an attempt by the parties to gain some measure of consistency in arbitration decisions in the coal industry. Arbitration attempts to apply the labor agreement in a uniform fashion that results in accepted industry-wide interpretations of the agreement. Although this result has been attained in some industries, the coal industry had never been capable of achieving such consistency in

arbitration decisions. The industry has often found itself in a situation where decisions dealing with the same contractual clause and work situation resulted in diametrically opposite arbitration decisions. This occurred, in part, as a result of the high volume of arbitration cases in the industry, which provided the opportunity for a large number of diverse views to be expressed on a topic. Evidence of this high volume is provided by the fact that approximately 30 percent of the grievances filed under the 1974 Agreement went to arbitration.[62] The high volume of arbitration decisions for an industry of this size is indicative of both the distrust between labor and management and the litigious nature of the parties. Also, the fact that arbitration decisions were not traditionally circulated in the industry in any systematic manner prevented arbitrators from easily accessing previous decisions that might be used as precedents in rendering their own decision.[63]

The implementation of an internal review board was a radical alteration of the grievance procedure traditionally utilized by the coal industry. The basic

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[62]Valtin, p. 470.

[63]Paul L. Selby, "The Fine Art of Engineering an Arbitration System: The United Mine Workers and Bituminous Coal Operators' Association", Proceedings of the Thirty-Second Annual Meeting- National Academy of Arbitrators, (Washington: The Bureau of National Affairs, 1979), pp. 185-186.

steps of the grievance procedure had been relatively unchanged from the 1934 Appalachian Agreement to the 1971 National Agreement. These steps are presented in the 1971 Agreement in Article XVII, Section (b) , "Grievance Procedure". This article outlined the grievance process as follows:

> National Bituminous Coal Wage Agreement of 1971
> Article XVII, Section (b): Grievance Procedure
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> Should differences arise between the Mine Workers and the Employer as to the meaning and application of the provisions of this agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the earliest practicable time. (The parties will not be represented by legal counsel at any of the steps below.):
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> (1) By the aggrieved party and his foreman who shall have authority to settle the complaint. Any grievance which is not filed by the aggrieved party within fifteen calendar days after he reasonably should have known of such grievance shall be considered invalid and not subject to further prosecution under the grievance machinery.
>
> (2) If no agreement is reached, the grievance shall be taken up by the mine committee and the mine management within five calendar days of the conclusion of Step 1. A standard grievance form shall be completed and jointly signed by the parties to the grievance. Such a form will be agreed upon by the parties.
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> (3) If no agreement is reached, the grievance shall be taken up by the UMW district representative and a designated representative of the Employer within ten calendar days of the conclusion of Step 2.

(4) If no agreement is reached, the grievance shall be taken up by the (Joint) Board within ten calendar days of the conclusion of Step 3 or in discharge cases within five calendar days of notice of appeal. The Board shall consist of four members, two of whom shall be designated by the Union and two by the Employer. Neither the Union's representatives on the Board nor the Employer's representatives on the Board shall be the same persons who participated in Steps 1, 2, or 3 of this procedure.

(5) Should the Board fail to agree the matter shall, within ten calendar days after decision by the Board, be referred to an umpire who shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and fees incident to the services of an umpire shall be paid equally by the Employer or Employers affected and by the Union.

The grievant shall have the right to be present at each step, if he so desires, of the foregoing procedures until such time as all evidence is taken. A decision reached at any stage prior to Step 5 of the proceedings above outlined shall be reduced to writing and signed by both parties. The decision shall be binding on both parties and shall not be subject to reopening except by mutual agreement.[64]

It should be noted that the Board referred to in Step 4 of this procedure is the Joint Board of Arbitration (also called the Joint Board or the Board). The practice of using a Joint Board in the coal industry originated in 1902, following a lengthy strike by anthracite miners. The President appointed the United States Strike Commission, which suggested the establishment of a Board of Conciliation to act as a

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[64]National Bituminous Coal Wage Agreement of 1971, Article XVII, Section (b), pp. 49-50.

bargaining agency in the coal industry. However, the Board of Conciliation evolved as one whose primary function was to hold hearings and collect evidence, providing a basis for an umpire to settle the dispute.[65] Thus the Joint Board was an adaptation of this concept to promote the local settlement of grievances. The Joint Board, comprised of two union officials and two company officials (or their representatives), was intended to provide a forum promoting discussion of the grievance by parties removed from the previous steps of the grievance procedure, in the belief that this would facilitate settlement of grievances prior to arbitration. In a 1956 study of the grievance settlement procedures in mining, however, Somers found that in many smaller districts the Joint Board's primary focus was one of establishing a record of the testimony and arguments in the grievance, not one of grievance resolution.[66]

The Joint Board's role in collecting testimony and providing a record of proceedings highlights a distinctive characteristic of the grievance procedure as it evolved in the coal industry. The practice of conducting a formal hearing, from which a transcript was

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[65]R.W. Fleming, The Labor Arbitration Process (Urbana: University of Illinois Press, 1965), p. 4.

[66]Gerald G. Somers, Grievance Settlement in Coal Mining, (Morgantown: Bureau of Business Research, West Virginia University, June 1956), p.7.

prepared for arbitral review, was unusual when compared to other industries. Although this practice established a thorough written record of the dispute, it introduced a formality more indicative of the courts than of the industrial jurisprudence system utilized in most industries. Such formality is strongly suggestive of an approach to labor relations that was very legalistic in nature and indicative of the lack of trust and cooperation common to coal during this period. A grievance and arbitration system grounded in such formal procedures could not hope to serve the principal function of an effective grievance procedure, that of providing the parties with a flexible and inexpensive means of quickly solving disputes in the workplace.[67] It is significant that the grievance procedure now utilized in the coal industry has greatly reduced the formality of the procedure, thereby correcting some of the deficiencies that existed previously.

As previously stated, the lack of consistency in arbitration decisions posed an additional, and more critical, threat to the stability of the grievance machinery in the coal industry. According to Valtin, the inconsistency in the arbitral process was the most

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[67]"Grievance Settlement in the Coal Industry", Proceedings of the American Arbitration Association, Spring, 1979, p. 35.

important characteristic of the grievance machinery in the coal industry in the early 1970's. There was a tremendous number of conflicting decisions on the same issues. This created a situation where both parties could see an opportunity to win any grievance, since each could find previous arbitration decisions that supported their positions on the issue. Therefore, there was a widespread lack of finality in the arbitration process in the coal industry, with endless arbitration of the same issues being the norm.[68] This perception was also expressed by Benedict, who served as a district representative prior to the 1974 creation of the Arbitration Review Board, and was subsequently selected as the union representative to the Board. Benedict cited the delicate position of the district representative who felt forced to arbitration since there were numerous decisions on an issue favoring the union, while at the same time knowing of an equal number of decisions on the same issue favoring management.[69]

There are varied reasons advanced for this lack of consistency, with each pointing to a labor-management relationship that lacked the sophistication required to provide an environment conducive to the development of a

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[68]Valtin, p.471.

[69]Robert C. Benedict, "Industrial Relations in the Coal Industry: The UMW Perspective on Industrial Relations", Labor Law Journal, (August, 1981), p. 573.

mature arbitration system. The lack of trained labor relations professionals, for both managment and labor, posed a serious obstacle to the maturity of the system. Hundreds of employers were without any labor relations specialists, while the union representatives were often more concerned with the political expediency of handling grievances than with development of a sound grievance system that would provide labor stability to the industry. Arbitration was often viewed as a means to avoid the negative political fallout that might occur from settling a grievance in a manner viewed unfavorably by the grievant.[70]

There were also structural factors found in coal that contributed to this continuous arbitration of the same issues. Despite the widespread acceptance of the arbitration process in American industry, the coal industry had never fully accepted arbitration as a natural solution to unresolved grievances. Up to the 1971 Agreement, many arbitrations were processed without the aid of a hearing, with the transcripts of Step 3 or Step 4 meetings being forwarded to the arbitrator for his review. It was also common for the parties to file briefs with the arbitrator supporting their position and bringing to light any facts they deemed relevant that had not surfaced during prior meetings. This method of

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[70]Valtin, p. 470.

arbitration often would leave the arbitrator in a position of having questions about information contained in the transcript, but with no way of getting answers to those questions. Thus a decision seeming perfectly logical to the arbitrator, given the information before him, would appear illogical and inconsistent with previous decisions to the parties who had knowledge of all the information surrounding the case.[71]

Another factor contributing to the lack of acceptability of arbitration in coal was the ad hoc method of arbitrator selection utilized in the industry. Certainly the use of ad hoc selection is not a detriment in itself, but the application of this technique in the coal industry created problems. Unlike most industries utilizing ad hoc selection of arbitrators, the coal industry did not consistently make use of the Federal Mediation and Conciliation Service or the American Arbitration Association. The parties normally preferred to make their own ad hoc selections, with frequent delays occurring as each party sought an arbitrator who had shown in previous decisions on the issue in question a stance sympathetic to the party's position.[72] The parties also preferred to make their own selections because there was a great deal of skepticism on both

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[71]Ibid., p. 470-71.

[72]Somers, pp. 8-9.

sides about the fairness, and even honesty, of the arbitral decision-making process.[73] This procedure obviously had a negative impact on the cost and time lag aspects of the grievance process, thereby creating additional strains on the labor relations climate at the mine site.

In an effort to correct the deficiencies cited above, the BCOA and UMWA greatly restructured the traditional grievance process in the 1974 negotiations. The relevant sections of the procedure set forth in the National Bituminous Coal Wage Agreement of 1974 are presented in Appendix A. Those sections of the Agreement establishing the Arbitration Review Board and detailing its role in the grievance process are presented below to provide a clear perspective of the role of the ARB as envisioned by the parties during negotiations:

> Article XXIII: Section (b)
> Arbitration Review Board
>
> (1) Within 60 days following the effective date of this Agreement, the United Mine Workers of America and the Bituminous Coal Operators' Association will establish an Arbitration Review Board composed of one representative of the UMWA, one representative of the Employer, and a chief umpire to be jointly selected by both parties. This 60 day period may be extended by mutual agreement.
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> (2) The chief umpire jointly selected by the parties shall serve for the balance of this

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[73]Valtin, p.470.

Agreement, unless removed by formal resolution adopted by either the International Executive Board of the United Mine Workers of America or the Board of Directors of the Bituminous Coal Operators' Association.

(3) In the event of removal, resignation, death or incapacity of the chief umpire, the president of the UMWA and the president of the B.C.O.A. shall endeavor to select a mutually acceptable successor within 15 days. In the event the parties fail to agree, they shall request the aid of the Federal Mediation and Conciliation Service in selecting a mutually acceptable successor. The composition of the panel may be considered by the parties at the time when renewal agreements are being negotiated.

(4) The presidents of the UMWA International Union and the B.C.O.A. shall jointly establish a panel of impartial arbitrators for each UMWA district. These panels may be changed, augmented or supplemented by mutual consent of the appointing parties. Arbitrators may be removed from a panel by either party upon 10 days advance written notice.

Article XXIII: Section (c)- Grievance Procedure

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(5) Either party to an arbitration, upon receiving a final award by a panel arbitrator, may petition the Arbitration Review Board to appeal the decision of the panel arbitrator. Such petition shall include a statement of the grounds for the appeal, which shall consist of one or more of the following:

(i) That the decision of the panel arbitrator is in conflict with one or more decisions on the same issue of contract interpretation by other panel arbitrators.

(ii) That the decision involves a question of contract interpretation which has not previously been decided by the Board, and which in the opinion of the Board involves the interpretation of a substantial contractual issue.

(iii) That the decision is arbitrary and capricious, or fraudulent, and therefore, must be set aside.

Upon receipt of such petition, the Arbitration Review Board shall review the decision of the panel arbitrator to determine whether grounds for appeal exist. If not, the Board will so inform the parties. If so, the Board shall review the decision of the panel arbitrator making whatever changes are necessary to assure that the final decision correctly resolves all contractual questions issues presented, and is consistent with prior decisions of the Board. The Board's decision shall be made by majority vote, and it shall issue its decision within fifteen days. Following review, the Board shall countersign its decision and transmit a copy to each party.[74]

The Arbitration Review Board was created to develop a set of authoritative rules of decision for interpreting and administering the labor agreement.[75] To accomplish this end, arbitration was of two levels under the 1974 agreement, the panel level and the review level. There were 18 UMWA Districts within the coverage of this agreement, and a panel of arbitrators was established for each district. The arbitrators were selected to the panel by joint action of the UMWA president or the BCOA president, but could be removed from the panel by the unilateral action of either party. Cases were to be

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[74]National Bituminous Coal Wage Agreement of 1974, (Article XXIII, Section (c)), pp. 118-121.

[75]Ibid., p. 186.

assigned on a rotating basis, and the administration of assignments was delegated to the ARB.[76]

When establishing the ARB, the parties had anticipated 500-700 panel arbitration cases per year, with only a few of these being appealed to the ARB. But once the system was put in effect, the panel caseload actually averaged 2,500 per year. This extremely high number of cases greatly overburdened the system, and arbitrators were overworked and unable to render decisions within the time frame expected by the parties. This resulted in dissatisfaction with the system, although the parties never seemed to realize that it was their own inability to settle grievances at lower levels of the process that created the delays in arbitration decisions.[77]

At the appeals level, the ARB was established as a tripartite board; with one UMWA representative, one BCOA representative, and one neutral member given the title of Chief Umpire. The BCOA and UMWA representatives were advocates of their party's positions, with the Chief Umpire making his decision on the basis of their arguments and the applicable contractual language.[78] The

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[76]Valtin, p. 472.

[77]Ibid., p. 473.

[78]Tom Waddington, Vice-President: Labor Relations, Bituminous Coal Operators Association, Telephone interview, November 1986.

Agreement clearly stated the grounds justifying the appeal of a panel decision: (1) the panel arbitrator's decision conflicted with one or more decisions on the same issue by other panel arbitrators, (2) the decision involved a question of contract interpretation which had not previously been decided by the Board, and which the Board felt involved a substantial contractual issue, and (3) the decision was arbitrary and capricious, or fraudulent. The final category, with its vague wording of "arbitrary and capricious", was to become the most frequently cited reason by the parties as to why the Board should review an arbitrator's decision.[79]

The 1974 Agreement gave the right to appeal arbitration decisions to this board to "either party to an arbitration", with most participants to the negotiations believing this reference was to the presidents of the BCOA and UMWA. This interpretation was consistent with the formation of the District Panels by these parties. However, this language eventually was interpreted to mean the particular employer and local union involved in an arbitration case. This interpretation was to have a significant negative impact on the operation of the ARB, since the presidents of the UMWA and BCOA could have been expected to screen cases

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[79]National Bituminous Coal Wage Agreement of 1974, (Article XXIII, Section (c), Part 5), pp. 120-121.

prior to any appeal. Without any screening procedure, appeals were considered a right of each party.[80] Ultimately, an average of 10 percent of the arbitration decisions were appealed, with this rate remaining fairly constant during the life of the ARB. Thus the annual caseload for the ARB was about 250 cases. This is an exorbitant number when one considers that the ARB was anticipating 60 appeals per year from an approximate 500-700 yearly panel cases.[81]

Another problem that occurred was the difficulty the parties experienced in making the Board operational. The contract was silent as to how the ARB was to operate, therefore there were continued negotiations as to the groundrules for operation of this new entity. The first hearing of the ARB did not occur until 14 months after the signing of the contract, yet the parties had continued to arbitrate cases regularly during this period. Thus the ARB faced a demanding backlog of cases, with new appeals arriving frequently to further complicate the situation.[82]

The delay in establishing the actual operating Board created two significant problems. The most obvious problem confronting the Board was the choice of whether

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[80]Selby, p. 193.

[81]Valtin, p. 474.

[82]Benedict, p. 573.

to quickly dispatch a decision for backlogged cases in order to clear the docket, or to give each case the careful scrutiny that the Board members felt was required by the language in the contract. The Board members chose the latter alternative, with the result being that only 126 cases were decided by the Board before the expiration of the 1974 Agreement. These cases were precedent-setting decisions that were to be referenced by arbitrators in the future when confronted with grievances similar to the ARB decisions. Although the number of decisions rendered by this Board was small, many industry participants maintain that it had a significant stabilizing effect on the arbitration process.[83] However, this contention of the Board's effectiveness has not been supported or refuted by any empirical analysis, as the operation of the ARB has been generally overlooked thus far in the literature.

The second problem created by the delay in beginning operation of the Board was the dissatisfaction of the parties, particularly the rank-and-file miners, with the delayed decisions. Delay in resolving disputes tends to have a progressive and cumulative negative effect on

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[83]Larry W. Blaylock, "The Current State of Grievance Arbitration in the Coal Industry", West Virginia Law Review, (vol. 82, Summer, 1980), pp. 1413-1415.

arbitration.[84] Many miners thus became disenchanted with the ARB before it had rendered its first decision, and were further disillusioned by the content of some of the first decisions rendered by the Board. Regardless of the merit of the ARB decisions and the reasons for the delay, there was a continually growing feeling among the membership that the Board should be abolished. In fact, there was a proposal at the 1976 UMWA convention that a right-to-strike provision be substituted for the ARB during the 1977-78 negotiations.[85]

Both parties realized that changes in the ARB were necessary if it was to remain a critical ingredient in the arbitration process in the coal industry. In order to allow the ARB to escape the outstanding backlog of cases, the parties created an Interim Board to decide all of those cases outstanding at the expiration of the 1974 Agreement. This board was a separate entity from the ARB and its decisions, 289 in all, were not precedential, although some arbitrators in the industry have continued to refer to these decisions. Some of the experts on labor relations in the coal industry appear to feel that these arbitrators following the Interim Board's decisions are wisely tapping a valuable source of guidance in

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[84]Peter Seitz, "Delay: The Asp in the Bosom of Arbitration", The Arbitration Journal, (Vol. 36, No. 3, September, 1981), p. 29.

[85]Miernyk, p.37.

reaching arbitration decisions. This sentiment was expressed in an interview with Tom Waddington, Vice-President of the BCOA, who was the industry representative on the ARB during the 1974 Agreement and screened appeal cases for the BCOA during the 1978 Agreement.[86] The use of the Interim Board and the changes in the ARB itself for the 1978 Agreement require a note of explanation in that those in the industry refer to the 1974 ARB as the "First Board", the interim board is referenced simply as the "Interim Board", and the 1978 ARB is known as the "Second Board".

The 1978 Agreement initiated some distinct alterations to the grievance and arbitration system in addition to refining some of the concepts from the 1974 Board. Blaylock has enumerated these changes as follows:

(1) The mine committee was given the power to withdraw any grievance at step two.

(2) Arbitrators were required to render decisions in an expeditious manner, and failure to do so was made grounds for removal by mutual consent of the appointing parties.

(3) Settlements or withdrawals at step one of the grievance procedure were held not to constitute a precedent in the handling of other grievances.

(4) The parties agreed to consolidate cases before one arbitrator where practicable in an effort to achieve the goal of "...expeditious processing of grievances."

(5) Post-hearing briefs were disallowed except when deemed necessary by the arbitrator.

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[86]Waddington, Telephone interview, May, 1986.

(6) The parties agreed to continue the "appellate system" with a sole umpire as opposed to the three member panel.[87]

A review of these changes reveals that the parties were attempting to reduce the number of grievances that would go to arbitration, hasten a decision of those that were taken before an arbitrator, and reduce the deliberations of the ARB by creating a one-person "Board".

Paul Selby, who served as the first single Umpire under the 1978 Agreement, points out that the right of appeal was changed to an application for acceptance for review. Also, the grounds for accepting review were reduced to the two dealing with contractual interpretation, eliminating the "arbitrary and capricious" clause found in the 1974 Agreement. The Board was also given the discretion, based on a form of certiorari practice, to decide whether the appealed case had enough importance to be considered critical to the uniform application of the contract on an industry-wide basis. If not, the case could be denied simply on the basis that the Board did not feel it was of enough importance to consider.[88]

Despite these changes, the Board continued to

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[87]Blaylock, p. 1405.

[88]Selby, pp. 194-195.

experience many of the same problems that had plagued the first Board. Time delays were a concern and continued to build the frustrations of the miners with the arbitration system, as the second Board decided only 81 cases during its tenure. The negative sentiments of the rank-and-file proved too much for the ARB advocates within the union and the union made the termination of the ARB a top priority during the 1981 negotiations. Although the Board was terminated at that time, the parties agreed that the decisions rendered by both the first and second Boards would continue to be binding precedents to which arbitrators in the industry should conform. Thus the coal industry currently has 207 precedent setting ARB decisions which are to guide arbitrators in their decision making process.

Summary

Grievance arbitration is widely accepted in the United States as the preferred mechanism by which to resolve industrial rights disputes that cannot be settled by the parties. The arbitration of grievances provides the parties a peaceful alternative to the industrial warfare that can occur in a setting where the economic strength of the parties determines the outcome of disputes. Society also benefits from the inclusion of arbitration provisions in labor agreements in that the

increased industrial stability provided by the process results in enhanced production since firms can continue to operate during the resolution of disputes.

Arbitration also provides the parties the opportunity to have an adjudication of their disputes by a neutral party familiar with the industrial setting in which the dispute arises, while avoiding the formality, delay, and expense of court litigation. The desirability of utilizing arbitration rather than the legal system to resolve industrial disputes has been recognized by both Congress and the courts themselves. The Labor-Management Relations Act of 1947 and the Supreme Court's Trilogy decisions provided strong endorsements of the utilization of arbitration as the preferred mechanism for dispute resolution in the industrial setting.

Arbitration has offered a peaceful alternative to dispute resolution for several decades, most notably since the advent of the War Labor Board and its subsequent endorsement of arbitration. But labor history provides numerous examples of parties who initially chose more violent alternatives in attempting to gain their objectives. Perhaps no better example of adversarial labor relations can be given than the development of the labor-management relationship in the bituminous coal industry. The competitive pressures exerted by the severe economic fluctuations in the coal industry, the

dependency of the worker on the company engendered by the geographic isolation of mining communities, and the safety hazards inherent in mining coal provided a fertile opportunity for those interested in unionizing the industry. The strong resistance of coal companies to unionization attempts often resulted in violent confrontations, with increased hostility and distrust emerging as the by-products. Despite the eventual adoption of grievance and arbitration procedures to settle disputes, the hostile attitudes of the parties have continually plagued the industry by creating an excessive number of grievances, with an inordinate number of these grievances requiring subsequent arbitration.

The high level of arbitration in coal, coupled with the lack of circulation of arbitration decisions in the industry, contributed to inconsistency in arbitration decisions. The lack of uniformity in decisions finally compelled the parties during the 1974 negotiations to create an internal review board, the Arbitration Review Board. This body was given the authority to review arbitration decisions and overturn those determined to be inconsistent with the Agreement. In effect, the Board operated as a quasi-Supreme Court for the arbitration process in the coal industry, with the Board's decisions being given the weight of binding precedent that required compliance by arbitrators. The Board was structured as a

tripartite board, with one representative from the UMWA, one from the BCOA, and one neutral member given the title of Chief Umpire.

The implementation of an operational Board was delayed for fourteen months after the effective date of the 1974 Agreement to allow the determination of groundrules and the selection of a Chief Umpire. This delay was also accompanied by an excessive rate of appeals to the Board by the parties, which was heightened by the lack of a suitable screening mechanism for the appeals. The combination of these factors placed a tremendous stress on the Board's ability to effectively accomplish its objective of creating consistency and stability in the arbitration process in the coal industry. Although the parties terminated the ARB during the 1981 negotiations, the 207 decisions rendered by the Board were continued as precedential decisions that provide guidance to arbitrators in rendering decisions. However, the extent to which arbitrators have adhered to these precedents is undetermined since there has been no empirical research on the topic.

CHAPTER III

RESEARCH METHODOLOGY

Introduction

This research effort combines both qualitative and quantitative techniques to provide a comprehensive examination of the Arbitration Review Board. Information collected from interviews with arbitrators, management and labor practitioners, and individuals having served on the ARB facilitated a qualitative assessment of the Board. This assessment incorporates a historical perspective of the environmental factors that influenced the inception, operation, and termination of the Board. It also examines the perceptions of the various segments of the coal industry as to the extent the ARB impacted the arbitration process in coal. The quantitative aspect of the research, an empirical analysis of arbitration decisions, provides a perspective of the ARB's impact that has not been attained by previous research. This assesses the extent to which the ARB has actually produced consistency in arbitration decisions for the bituminous coal industry.

Qualitative Data Collection

To collect information necessary to complete the qualitative aspect of this study, structured interviews

were conducted with individuals who were principal players in the creation and operation of the ARB. All of those persons having served on the ARB were interviewed, as were industrial relations specialists who presented cases before the Board and implemented the Board's decisions in the industry. In addition, current practitioners who continue to operate in the arbitration environment created by the Board's decisions were interviewed. Also, arbitrators' perceptions of the importance of ARB decisions in the arbitral decision-making process were sought. In addition to the five individuals that served on the Board at various times, interviews were conducted with thirteen management representatives, twelve union representatives, and fourteen arbitrators. (See Appendix B for a listing of individuals interviewed.)

All interviews were structured to gain information on eight research questions that focused on critical aspects of the Arbitration Review Board. The research questions were designed to provide insight into the Board's inception, method of operation, termination, and impact on the arbitration process. The impact of the ARB on the arbitration process was considered to be of a dual nature, that which occurred while the Board was in existence, as well as the residual impact of the Board after its termination. This dual assessment of the

Board's impact was clearly warranted, since the parties specifically stated in the 1981 National Agreement that the decisions of the Board were to be continued as precedent for panel arbitrators. Another important aspect of the Board's termination was its reestablishment of the finality of the panel arbitrator's award, thus requiring voluntary compliance with the Board's precedents. This mode of compliance was certainly much different than that which existed during the Board's existence, when the Board could overturn and reprimand those arbitrators who refused to comply with Board precedents.

The eight major research questions addressed are:

(1) What forces within the coal industry created the need for a mechanism, such as the Arbitration Review Board, to stabilize arbitration in the industry?

(2) Why was there a 14-month delay between the signing of the 1974 National Agreement and the beginning of operation of the ARB?

(3) Given the large volume of panel decisions appealed to the ARB, why did the Board render so few decisions (207)?

(4) In what ways did the First Board, Interim Board, and Second Board differ in their mode of operation?

(5) Why did the parties opt to have the Second Board comprised of only one arbitrator, thereby placing tremendous authority in the hands of one person?

(6) What were the primary factors resulting in the termination of the ARB?

(7) To what extent have arbitrators been influenced

by the ARB precedents, both during its existence and in the years following its termination?

(8) What is the likelihood that the coal industry will once again employ an appellate review system for arbitration decisions?

The interview schedule was comprised of 26 items. It focused on obtaining information not found in the literature on the Arbitration Review Board, thereby developing a more complete perspective of the Board. (The interview schedule can be found in Appendix C.) Of the twenty-six items used, three separate items were intended to address Research Questions 1, 2, 4, 5, and 6 respectively; four items dealt with Research Question 3; five items focused on Research Question 7; and the two remaining items concerned Research Question 8. (A matrix relating the questions from the interview schedule to the research question they were intended to address is located in Appendix D.)

To insure the content validity of the interview schedule, labor relations specialists in the coal industry were consulted during the development of the research questions and the data collection instrument. Their perceptions of the importance of the research questions and the adequacy of the interview schedule in addressing these questions were extremely beneficial in designing and implementing the final list of research questions and items for the interview schedule. Their

suggestions and comments were largely incorporated into the final questionnaire. (A list of those individuals consulted is found in Appendix E.)

The selection of individuals to be interviewed was facilitated by the location of the investigator in the center of the Appalachian coal fields, which allowed ready access to numerous practitioners from both management and labor. Additional individuals were identified by virtue of their positions, either with coal companies or within the union. Arbitrators were selected from lists of panel arbitrators, with 85 percent of those selected having served on multiple panels. Interviews were conducted at multiple locations, including the offices of the interviewees and the office of the investigator, and were accomplished both by telephone interviews and in person.

Hypotheses

As stated in the review of the literature, the Arbitration Review Board was intended to provide consistency where there had been inconsistency-- in the arbitration decisions of the bituminous coal industry. Such consistency does not occur, however, simply because the parties desired that to be the end product of the system. The implementation of the ARB was hindered by a variety of factors, thus it was not reasonable to

anticipate full compliance with ARB decisions from the very outset.

One problem encountered in seeking the desired consistency was the overworked condition of many panel arbitrators, particularly those serving on more than one district panel. As discussed in Chapter 2, the arbitration caseload during the 1974 Agreement was staggering. Also, arbitrators were pressured by the parties to render decisions in a fashion consistent with the "without delay" language found in the Agreement. The number of cases thrust upon the arbitrators and the urgency in rendering decisions served to inhibit their application of ARB precedents.[87] In addition, during the early stages of the Board's operation when relatively few decisions had been rendered, there were naturally some unanswered questions as to the intent of some Board decisions. As a result, different arbitrators might construe the ARB decisions in different ways, resulting in the need for the ARB to further clarify the issue with an additional decision.

Another aspect of the system that hindered the rendering of arbitration decisions consistent with the ARB precedents was the high turnover in panel arbitrators during the first years of the ARB experiment. Changes in the district panels were frequent, with approximately 50

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[87]Valtin, p. 475.

percent of the panel arbitrators being replaced during the life of the 1974 Agreement.[90] Those arbitrators appointed to a panel after the ARB system was well under way were often in a position of trying to familiarize themselves with the entire log of ARB precedents while confronting a heavy caseload. This certainly did not provide the initial stability in the system that was needed to allow a smooth transition to adherence with ARB decisions.

Arbitrators accustomed to rendering decisions in an environment such as that described above may have difficulty attaining consistency with ARB precedents. But the eventual stabilization of the district panels and the improved efficiency of the ARB operating system created conditions more supportive of the ARB concept. Also, with the passage of time, arbitrators have an opportunity to adjust to the precedents established by the board. The increased circulation of arbitration decisions throughout the industry during this period provided arbitrators an opportunity to see the application of ARB decisions by other arbitrators. In addition, the increasing number of precedent-setting decisions by the Board imposed a greater burden on arbitrators to reconcile any decisions with the board's position, particularly since the Board exhibited a

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[90]Ibid., p. 473.

forceful stance in chastising arbitrators that had ignored previous ARB decisions. Thus, an initial hypothesis emerged:

H1: The extent to which arbitrators relied on ARB precedents increased as the Board's longevity increased.

Although the ARB was abolished in 1981 the precedent-setting decisions continue in effect in the coal industry. However, the reliance by arbitrators on these precedent-setting decisions is insured only by the arbitrator's willingness to adhere voluntarily to the decisions and his fear of being unseated from the District Panel should either party feel he has acted arbitrarily. Although one might argue that the possibility of removal from the panel is sufficient deterrent to those arbitrators tempted to break with ARB precedents, the process of removal requires time and does little to soothe the losing party in the arbitration proceedings.

The environmental and structural changes that have occurred in the coal industry with the passage of time since the Board's termination in 1981 have raised questions as to the continued applicability of ARB decisions. According to Elkouri and Elkouri, a segment of arbitrators have agreed that an arbitrator is

justified in refusing to follow an award whose application is rendered questionable by changed conditions.[91] The same logic is applicable in those instances in which the arbitrator perceives the circumstances surrounding an instant case as being different from those of the precedent. Arbitrators have generally found that the precedent is not controlling in such situations.[92] Also, changes in contractual language have modified certain Board decisions, with a determination of the extent of such modification subject to the discretion of individual panel arbitrators. Elimination of the prospect of having the decision reviewed by the ARB affords the arbitrator more freedom to "dispense his own brand of industrial justice". A second hypothesis derived from this reasoning was:

H2: Following the elimination of the Arbitration Review Board in 1981, arbitrator reliance on ARB precedents decreases with the passage of time.

Prior to the creation of the ARB the parties in the coal industry tended to arbitrate many questionable grievances in the belief that there was so much diversity

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[91]Elkouri and Elkouri, p.428.

[92]Brook I. Landis, Value Judgments in Arbitration, (Ithaca: New York State School of Industrial and Labor Relations, 1977), pp. 60-62; and Elkouri and Elkouri, pp. 428-430.

in arbitrator reasoning that any grievance could possibly be won at arbitration. The precedent-setting decisions of the ARB were intended to reduce the necessity for the parties to seek the interpretation of language by individual arbitrators by conclusively settling the issues before the Board.[93] It should be noted, however, that these conditions for decreasing the number of grievances pursued to arbitration were only present after an initial flurry of arbitration cases and appeals to the ARB had established the industry standards on a variety of issues.

Given the continuing effect of those precedent-setting decisions after the termination of the ARB, the same conditions theoretically continue to exist. However these conditions exist only to the extent that the parties have perceived arbitrators as adhering to ARB precedents. In other words, if the precedents are no longer having the stabilizing force on arbitration that was intended, the parties will return to the practice of attempting to take advantage of the divergence in arbitrators' values and reasoning by submitting to arbitration any grievance where there is a possibility of securing a favorable decision.

An additional factor that would indicate an increase in the arbitration rate following the termination of the

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[93]Blaylock, p. 1415.

Board is the emergence of new disputable issues for which there are no controlling Board decisions. For these particular issues, the parties are in the same situation as that existing prior to the 1974 inception of the Board. There are no industry-wide precedents, thus the parties' success at arbitration can be a function of the individual selected to arbitrate the dispute. Therefore, the parties are more likely to pursue such an issue to arbitration than would be the case if a clear Board precedent still prevailed on the disputable issue. Two hypotheses developed along these lines were:

H3a: Following the initial increase in the arbitration rate after the Board's inception, there was a decline in the arbitration rate prior to the termination of the ARB in 1981.

H3b: After the termination of the ARB, there has been an increase in the arbitration rate.

Classification of Arbitration Decisions

Determination of the impact of the Arbitration Review Board on arbitral decision-making is a critical aspect of this study. Rather than rely only on the intuitive assessments of the few persons having written on the ARB, an empirical analysis of the Board's impact would contribute more to a thorough understanding of the Board.

To conduct such an empirical assessment, 300

arbitration decisions from the coal industry were randomly selected for analysis. Arbitration decisions were selected from the years 1977, 1979, 1981, 1983, and 1985, with the 300 total decisions being comprised of 60 for each of the five years. Selection of these particular years was predicated upon the desire to assess arbitrator compliance with ARB precedents at various times throughout the ARB experience. Since the Board did not become operational until February, 1976, an assessment of arbitrator compliance in the early years of the Board cannot begin until 1977. By selecting cases in alternate years from 1977-1985, an evaluation of arbitrator compliance over time becomes possible. Also, selection of these years provides an even distribution of time for which the board was in operation, as compared to the time following termination of the Board. Since the Board was terminated in 1981, the years selected represent two full years of Board operation, the year of termination, and two years after termination of the Board.

To select the sample of cases for each year, the Coal Arbitration Library System numbering system was utilized. With this system all arbitration decisions for a given year are grouped together, and then are arranged by article of the contract. Based on the date of the decision, decisions are placed in chronological order

within each article. For example, all of the decisions for 1985 are placed together, with all decisions pertaining to Article One preceding those dealing with Article Two. The first decision pertaining to Article One in January of 1985 is followed sequentially by all other Article One decisions for the year, and this procedure is repeated for each successive article of the contract. Beginning with the first case of Article One and proceeding through each article of the contract, numbers were assigned to each case in the population of decisions for each year. With the aid of a random numbers table, sixty random numbers were selected for each year and the cases corresponding to these numbers were chosen for the sample.

The decision to select 60 cases for each of the years was based on the utilization of the Chi-square statistical analysis of the frequency distribution for the cases. Since four adherence classifications were being used in analyzing arbitration decisions, the necessity of having an average of fifteen observations per cell required sixty cases per year.

Cases were selected from the files of Coal Labor, Inc., of Bluefield, West Virginia. The files of Coal Labor include all of those arbitration decisions compiled by the BCOA, and many additional decisions not found in the BCOA files. This is important to note, as it

provides a more broad based population from which to sample than do the BCOA files alone. The reason for this discrepancy in files is found in the many companies that are signatory to the National Agreement, but are not members of BCOA. Coal Labor, Inc., is an independent labor consulting firm representing various coal companies in grievance and arbitration proceedings; therefore, it augments the BCOA files with the arbitration decisions from non-BCOA signatory companies. By having this larger population from which to sample, inferences from the results of the analysis have greater applicability to the industry as a whole.

After completing the selection process, the content of selected arbitration decisions was analyzed on the basis of compliance with ARB precedent-setting decisions.[74] Prior to this analysis, the researcher spent considerable time becoming familiar with the ARB precedents. This familiarization process was intended to reduce the possibility of classification bias occurring should the researcher begin the classification process with no knowledge of the p[illegible]sification of decisions had been commenced without a thorough understanding of the precedents, the classification of

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[74]See Robert P. Weber, Basic Content Analysis, (Beverly Hills: Sage Publications, 1985); and Karl Erik Rosengren, Advances in Content Analysis, (Beverly Hills: Sage Publications, 1981).

cases in the beginning and later stages could have been conducted with a different knowledge base, thereby producing errors in the classification process.

To allow testing of Hypothesis 1 and Hypothesis 2, each arbitration decision was analyzed as to its extent of adherence to precedential ARB decisions. Four possible classifications existed for each decision, ranging from "Strict Adherence to ARB Precedent" to "Open Nonadherence to ARB Precedent". A set of decision rules were utilized to assist in the content analysis of the arbitration decisions. The decision rules for each classification are presented below:

Classification 1: Strict Adherence to ARB Precedent

a. An Arbitration Review Board decision was cited as the basis for the arbitration decision.

b. The arbitrator rendered a decision in full compliance with the cited ARB precedent.

Classification 2: Adherence in Principle to ARB Precedent

a. There was no citation of an ARB decision, although there were one or more ARB decisions relevant to the issue being arbitrated.

b. Although there was no citation of an ARB precedent, the arbitrator clearly adhereed to the principles established by the relevant ARB decision.

Classification 3: Violation in Principle of ARB Precedent

a. There was no citation of an ARB decision, although there were one or more ARB decisions relevant to the issue being arbitrated.

b. In addition to not citing relevant ARB decisions, the arbitrator violated the principles established

by those decisions.

Classification 4: Open Nonadherence to ARB Precedent

a. The arbitrator cited relevant ARB decisions.

b. The arbitrator rendered a decision that was contrary to the ARB precedent.

These four classifications were developed to represent varying degrees of adherence to Arbitration Review Board precedents. This classification scheme attempted to span the range of possible degrees of compliance; from the citation of and strict adherence to a relevant ARB decision (Classification 1) to the citation of a relevant ARB decision accompanied by a decision that is directly contrary to that citation (Classification 4). Classifications 2 and 3 represented degrees of adherence based on the principle of an ARB decision, with no citation of the relevant decision. Assignment of cases into either of these classifications first required a careful analysis of those ARB decisions relevant to the case under analysis, and then a determination of the arbitrator's application of the principles from the relevant ARB decisions to the instant case.

In an effort to assess the reliability of the classification process as completed by the researcher, a subsample of the 300 decisions under analysis were selected for review by a panel of four coal industry

labor relations experts. (A listing of these individuals is provided in Appendix F.) The subsample, selected by using a stratified random sample, consisted of 30 decisions.[95] The strata were based on the overall distribution of cases by classification, with the subsample reflecting the same percentage of each classification as did the overall sample. For example, if 30 percent of the 300 decisions were assigned to Classification 1 by the researcher, then 30 percent of the thirty case subsample was randomly selected from Classification 1. Therefore, in this hypothetical case, nine cases in the subsample would be from Classification 1. Each panel member reviewed 15 of the decisions, thus yielding a total of 60 decisions from the reviewers by which to assess the reliability of the investigator's classification results.

The reviewers were given a copy of the decision rules utilized by the researcher in his analysis, but had no knowledge of the classification to which each case had been assigned. The decision rules were discussed with each reviewer to make certain there were no misinterpretations of the rules for each classification. The evaluation of the reviewer for each arbitration decision was then compared to the evaluation of the

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[95]Special appreciation is extended to Dr. Camille Schuster, Marketing Communications Faculty Member at Virginia Tech.

researcher, thus providing an assessment of the reliability of the researcher's classification procedures.

In order to examine Hypothesis 3, the total number of arbitration decisions for each of the years under study was determined. Since the number of arbitration decisions in any year could have been influenced by the level of production in the industry, it was necessary to control for the varying production levels in each of the five years. In order to provide this control, the number of arbitration decisions was expressed as Arbitrations per 100 Million Employee Hours of production. This provides a more realistic appraisal of the number of arbitration decisions directly attributable to the industrial relations system in the industry.

Analysis of the Data

The arbitration decisions for each of the five years under consideration was reviewed and placed in one of the four categories stated previously. The frequency distribution for the four categories was subjected to a Chi-Square analysis to determine if a significant association existed between the variables. There appeared to be two choices for data analysis: the Chi-square analysis or a utilization of loglinear modeling to

determine the model that best explained the data.[96] The Chi-Square analysis was selected since it provided a better basis for statistical testing of the stated hypotheses.[97]

In addition, the standardized residual was computed for each cell in an attempt to determine the contribution of each cell to the overall Chi-Square value. The analysis of the standardized residuals allowed a more definite determination of the causes of the variance between the observed and expected values.[98]

Summary

This chapter sets forth the methodology employed in the study. The distinctive nature of this research in utilizing the combination of qualitative and quantitative research techniques provides a thorough examination of the Arbitration Review Board. The hypotheses to be tested were set forth, as were the data collection techniques for both the qualitative and quantitative

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[96]Appreciation is extended to Statistical Consulting Services, Virginia Tech, for assistance in loglinear modeling.

[97]The investigator wishes to extend special appreciation to Dr. Dennis Hinkle, Professor, Virginia Tech, for his assistance in this area.

[98]Shelby J. Haberman, "The Analysis of Residuals in Cross-Classified Tables", Biometrics, (vol. 29, March, 1973), pp. 205-219.

portions of the study. The first hypothesis deals with the extent of arbitrator compliance with ARB precedents during the Board's existence. The second examines the residual impact of the Board following its termination, and the final two hypotheses are related to the level of arbitration in the coal industry during and following the ARB's existence.

Data for the qualitative aspect of the analysis was collected through the use of structured interviews with former ARB members, arbitrators, management practitioners, and labor practitioners. To collect the data necessary for the empirical assessment of the Board's impact on the arbitration process in the coal industry, content analysis was performed on 300 arbitration decisions, sixty from each of five different years. This data was then subjected to a Chi-Square analysis.

CHAPTER IV

RESULTS

A Qualitative Assessment of the Arbitration Review Board

One of the important objectives of this study was to provide a more complete view of the Arbitration Review Board than had been previously available. The few articles written concerning the ARB have tended to focus on selected aspects of the Board, and there has never been a full treatment of the Board in the literature. This research endeavor attempted to rectify this situation by gathering detailed information about the Board's inception, operation, termination, and impact.

To accomplish this end, interviews were conducted with a wide variety of individuals. During its existence, five different persons served on the Arbitration Review Board at various times, and all of these individuals were interviewed. Practitioners, both management and union, who have operated under the Board's review and the continuing impact of the Board's decisions were questioned. In addition the researcher interviewed a variety of coal industry arbitrators. Some of these arbitrators have arbitrated in the industry during the entire period of the ARB experience and others have become coal arbitrators after the ARB's termination in

1981. These new arbitrators provided the opportunity to assess a fresh perspective of the desireability of adhering to contractual precedents, even though these arbitrators had no first-hand experience with the precedent-setting body. On the other hand, the more established arbitrators provided enlightenment as to the difference between coal industry arbitration when the arbitrator was subject to review by the ARB and the current situation of being contractually bound by ARB precedents, but without the Board's presence as a review mechanism. By having such a diverse collection of respondents, this research provides a more comprehensive and thorough analysis of the coal industry experience with the Arbitration Review Board than has been accomplished with any previous works.

The qualitative information collected during this research was utilized to answer the research questions set forth in Chapter III. The research questions are addressed separately, with each being restated for purposes of clarity prior to a discussion of the findings related to that question. In some cases, the collection of information by which to answer the research question lead to the discovery of additional information that is beyond the intended scope of the research question. In those cases, this additional information is presented with its relevant research question.

RQ 1: What forces within the coal industry created the need for a mechanism, such as the Arbitration Review Board, to stabilize arbitration in the industry?

The responses received from all segments of the coal industry to this question were very consistent; and at first glance, seem to provide a simple rationale for the establishment of the Arbitration Review Board. However, the first impression of this seemingly simple response can be misleading. All parties expressed the belief that the inconsistency of arbitration decisions prior to the 1974 negotiations, particularly under the 1971 contract, was the primary factor that caused the BCOA and UMWA to resort to the ARB. During this period, it was quite common for one arbitrator to rule in management's favor on an issue, while a different arbitrator ruled in favor of the union on the same issue. Advocates for both management and the union utilized these conflicting decisions to their advantage, citing those that agreed with their position in new arbitration cases on the issue. Obviously, this created an environment that encouraged the parties to seek an arbitrator's decision on many issues in disagreement, rather than seek to reach their own consensus. Therefore, issues were never completely settled by arbitration. The rate of arbitration was rapidly rising as the parties became

increasingly convinced that their success in arbitration depended not on the intent of contractual language or the merits of their case, but on the individual feelings of the arbitrator toward the issue under dispute.

This may at first appear to provide a ready answer to the research question under consideration; but, a more thorough analysis is needed to determine why the arbitration process in the coal industry lacked the consistency found in most industries. Certain structural characteristics that existed, or emerged, in the industry within this period can be cited as contributing to this instability. The various groups of individuals interviewed were divided with respect to the relative importance of these factors.

The very structure of arbitration in the coal industry during this period was itself a disruptive factor. Arbitration decisions were not circulated in the industry in any formal manner, and there were no district panels prior to 1974. Therefore, the content of arbitration decisions was normally made known to arbitrators only by advocates attempting to support their position in a case before the arbitrator. This lack of knowledge by arbitrators as to the findings of other arbitrators dealing with the same issue most certainly contributed to the inconsistency in arbitration decisions. This factor was most often cited by

arbitrators and management practitioners as a leading cause of inconsistent decisions.

Another characteristic of coal arbitration in this period, cited by some arbitrators and a significant number of practitioners (44%), was the inconsistency in arbitral quality. Those responding in this manner did not condemn the arbitration community as a whole, but did cite the wide variance in quality of arbitrators that existed. Most respondents felt this was the result of using the ad hoc method of selection, with each party trying to secure an arbitrator sympathetic to his position. The coal industry further magnified this problem by not requiring the utilization of the American Arbitration Association or the Federal Mediation and Conciliation Service as referral agencies for the ad hoc selection. The overall thrust of this group of critics is best illustrated by the one advocate who summarized his viewpoint by saying, "The arbitrators were not as professional as what we have today."[99]

Given these structural deficiencies in the arbitration process, any factors that increased the number of arbitration cases provided the potential for additional inconsistency in decisions. There were several such factors operating during this time period.

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[99]Interview with Eastern Coal Corporation official, March, 1987.

The coal industry has always been cyclical in nature, and the early seventies found the industry in a period of resurgence from the lackluster sixties. With this resurgence came the need to hire many new, and inexperienced, miners. Many of the individuals hired during this period were much younger than those miners that had survived the mechanization era layoffs of the 1950's. Thus the workforce in the mining industry suddenly became one having a dichotomous age distribution, with large numbers of miners in the older and younger extremes, but with few middle-age experienced miners. In fact, there were few middle-age employees at all, as many persons in this age group had established themselves in other careers during the depressed years in the coal industry.

The large contingent of younger workers differed from their older, experienced counterparts in ways that directly impacted the grievance and arbitration process in the industry. In the first place, the younger workers were more inclined to challenge the authority of management, and more militant in voicing that challenge. These workers were to a great extent products of the demonstration era surrounding the Vietnam Conflict, with many veterans of that conflict being included in the coal industry workforce. Whereas the older workers were conditioned to seeking a peaceful settlement of their

disputes, often prior to arbitration; this younger segment of the workforce was accustomed to using confrontation as a means of achieving a resolution of their grievances. This is strongly evidenced by the high incidence of unauthorized, or "wildcat", strikes that occurred during the first half of the seventies decade. Within the arbitration context, this attitude manifested itself in a lack of trust of management's motivations in the grievance procedure and a desire to have an arbitrator decide the dispute.[100] The tremendous increase in grievance and arbitration activity generated during this time certainly limited the ability of arbitrators to stay abreast of the most recent decisions.

Another structural change occurring during this period was the radical reform movement taking place within the union. Arnold Miller's rise to the presidency of the UMWA signalled the beginning of democracy within the union. These democratic reforms occurred in many ways, the most often-cited being the ratification of proposed contracts. Another reform of the Miners for Democracy movement was the election of union district representatives, who had previously been appointed to their positions. Although not as well known as the

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[100]Interview with Michael Hymes, Regional Manager of Industrial Relations, Consolidation Coal Company, November, 1986. This view was expressed by other respondents as well.

contract ratification reform, this reform was to have considerable consequences in the arbitration process.

Prior to the democratic reforms, district representatives handling grievances for members had more flexibility in determining whether a grievance had sufficient merit to warrant arbitration. Once these positions became elected, the district representatives very often found themselves in a position of carrying grievances to arbitration simply for the political expediency of the action. This political pressure was very intense in those areas where inconsistent decisions had been rendered. The district representative could hardly tell his grievant that his claim was unwarranted, in light of the lack of well-established arbitral guidelines to control the issue. The increase in arbitration decisions generated by such actions again served only to provide the basis for more inconsistent decisions. A pattern quickly developed where the inconsistency in decisions and the rising number of arbitration cases fed on one another in such a way as to make it difficult to break the cycle. This destructive pattern required that a radical departure from traditional methods of arbitration be implemented in hopes of establishing consistency in the industry's arbitration decisions. The leaders of the industry chose to accomplish this end by implementing the Arbitration

Review Board.

RQ 2: Why was there a 14-month delay between the signing of the 1974 National Agreement and the beginning of operation of the Arbitration Review Board?

Although the 1974 National Bituminous Coal Wage Agreement of 1974 became effective on December 6, 1974, the Arbitration Review Board did not begin its review of appeals until February, 1976. By this time, there were over 400 appeals before the Board.[101] This overwhelming backlog of appeals seriously impaired the Board's chances of success because it insured that there would be a significant delay in a final resolution of grievances. This backlog and delay was cited by a large majority of respondents (82%) from all of the groups interviewed as a primary cause of the negative feelings toward the ARB that were pervasive in the industry, particularly the union segment, under the 1974 Agreement. In an industry that had traditionally placed a premium on a quick resolution process, the parties developed negative first impressions of the efficiency of the Arbitration Review Board. These first impressions were reinforced by similar time delays in subsequent cases, as the Board

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[101]Waddington, November, 1986.

never recovered from the strain brought about by the initial backlog.

Although this initial overload on the ARB has been cited previously in the literature, no reasons for such a lengthy delay have been provided. It is understandable that time was necessary to establish the administrative procedures of such a Board, but a 14 month period deserves an explanation.

The negotiators in 1974 agreed only to the composition of the Board and the implementation of the panel system, with the naming of the individuals to serve on the Board and the selection of panel arbitrators being deferred. Part of the reason for deferring these actions was the uncertainity surrounding the contract ratification process by the UMWA rank-and-file. The 1974 Agreement was the first agreement subject to the ratification procedures established by the democratic reforms of the Miller regime. Thus there was a great deal of uncertainity surrounding the ratification process, and a reluctance by the parties to expend the effort necessary to establish an operational board prior to the successful ratification of the Agreement.

There is also an indication in the 1974 Agreement that the parties felt that the unsettled details could be quickly dispatched following ratification of the Agreement. Article XXIII, Section (b)(1) of the 1974

Agreement makes reference to a sixty day time frame for the establishment of the Arbitration Review Board, with an extension of this period by mutual agreement of the parties.[102] The fact that the sixty days evolved into 14 months is indicative of the complexity encountered in trying to develop an innovative arbitration system. The time necessary to agree on a Chief Umpire and to select panel arbitrators was much greater than either party had anticipated. In addition, other problems not expected were encountered that delayed the implementation of an operational Board.

Since the negotiators had not named a Chief Umpire for the Board, nor developed a procedure for selection, the parties were faced with developing a consensus on how that individual was to be selected. To accomplish this end, a committee comprised of both management and union representatives was appointed. The committee's first task was to reach agreement on the guidelines to be utilized in the selection of the Chief Umpire. Following this, prospective candidates for the position of Chief Umpire were identified, contacted to determine their interest, and interviewed. The selection of Rolf Valtin as the Chief Umpire of the Arbitration Review Board finally occurred in June, 1975, although he did not begin

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[102]National Bituminous Coal Wage Agreement of 1974, p. 117.

serving on a full time basis until September of that year.[103] Mr. Valtin possessed vast experience as a Chief Umpire in the auto and steel industry. His selection provided the coal industry with an individual of significant reputation in the arbitration community.

Since the ARB was to be a tripartite body, the BCOA and the UMWA both named their representative to the Board, with Tom Waddington representing the BCOA and Robert Benedict representing the UMWA. Waddington, currently the Vice President of Labor Relations for the BCOA, had been involved in the 1974 negotiations and was a member of the committees established to select a Chief Umpire and panel arbitrators; thus, he was extremely familiar with the development of the ARB concept. Benedict had not been involved in the negotiations nor the selection of a Chief Umpire and panel members, but had a sound foundation in coal industry labor relations as a district representative in Illinois. Thus both parties were represented on the Board by individuals having outstanding credentials for such an undertaking.

The selection of panel arbitrators followed a similar procedure, and the parties found they had also underestimated the time needed to fill the various district panels. In addition, the ground rules for

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[103]Rolf Valtin, Arbitrator and first Chief Umpire of the Arbitration Review Board, Telephone interview, January, 1987.

operation and the proper record-keeping procedures for the panel system had to be formulated. A staff to administer the panel system required recruitment, selection, and training.

When one considers the collective time necessary to select a Chief Umpire, panel arbitrators, an ARB staff, and to formulate rules of operation for the entire ARB system; it becomes obvious that the negotiators seriously miscalculated the time requirements for establishing an operational Arbitration Review Board. Since the contract allowed the appeal of any arbitration decision arising under the 1974 Agreement rather than delaying the right of appeal until after the Board became operational, this miscalculation proved extremely costly to the parties in the backlog of cases that was generated.

Following the selection of the three members of the Arbitration Review Board, these members had to decide the ground rules for the operation of the appeals system. Again, this was necessitated by the lack of information in the Agreement as to the operational aspects of the Board. The three-member Board had substantial authority in determining several critical aspects of the Board's operation. For example, the determination to hold hearings when the Board deemed necessary rather than rely solely on transcripts in all cases was decided by these three individuals, not the negotiators of the Agreement.

The Board also decided its own policies on such issues as whether it should write opinions to accompany its decisions, whether there should be dissenting opinions allowed when the vote was not unanimous, and whether the BCOA and UMWA representatives were to serve as advocates of their party's position or as neutrals serving as one of three Umpires on the Board. These deliberations by the Board required the use of time that could have been utilized in reviewing appeals had the negotiators provided a more thorough framework for the Arbitration Review Board. The 14 month delay generated by the lack of such a framework was cited by most respondents, from all categories, as one of the fundamental flaws of the ARB that created a negative image for the system.

RQ 3: Given the large volume of panel decisions appealed to the ARB, why did the Board render so few decisions (207: 126 by the First Board and 81 by the Second Board)?

The number of appeals actually reviewed by the Board appears to be relatively small, given the large number of decisions appealed to the ARB. The appeal rate under the 1974 Board was approximately 10 percent of the arbitration decisions rendered by the panel arbitrators. Since the average number of arbitration decisions during this period was 2,500, this yielded approximately 250

appeals per year for a total of 750 appeals under the 1974 Agreement.[104] Of this number, 126 were reviewed by the Board, with the remainder being dealt with at the end of the 1974 Agreement. The appeals remaining at the expiration of the Agreement were concluded by one of two methods. Many were withdrawn by the parties through a screening process, and 289 were decided by the Interim Board established to clear all appeals remaining under the 1974 Agreement.

The most thorough analysis of the causes of the relatively low output of the Board was put forth by the Chief Umpire of the First Board, Rolf Valtin. Near the conclusion of the 1974 Agreement, Mr. Valtin wrote a joint memorandum to UMWA President Arnold Miller and BCOA President Joseph Brennan in which he stated his perceptions of the industry's experience with the Arbitration Review Board.[105] In assessing the Board's low output, Mr. Valtin emphasized the decisions originally made by the Board as to the manner in which the Board would perform its review function. According

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[104]Valtin, 1978, p. 474.

[105]Rolf Valtin, Unpublished memorandum to Arnold Miller, President of the United Mine Workers of America, and Joseph Brennan, President of the Bituminous Coal Operators Association, November 8, 1977. The researcher wishes to express his sincere appreciation to Mr. Valtin for making this memorandum available, and for his efforts in securing the permission of the BCOA and UMWA to allow the publication of its contents.

to Mr. Valtin:

> Briefly stated, the Board's approach has been:
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> 1) to undertake true reviews of the cases submitted, which entails the reading of the case record as well as the reading of the Panel Decision;
>
> 2) to write an Opinion in those instances in which the Panel Decision is reversed or modified;
>
> 3) where considered necessary, to write clarifying comments in those instances in which the Panel Decision is affirmed.
>
> The gain of this approach should be obvious: it provides demonstration to the people in the coal fields that the cases before the Board are considered and decided on their merits. But there is no denying that the approach entails time consumption of several days, rather than hours, per case and that it therefore impedes the Board's capacity to be up to date.[106]

When interviewed, the other members of the original Board stated their agreement with this approach; thus there was unanimity among Board members as to their approach. By taking this position, the Board felt they would strengthen the integrity and acceptability of the appeal process. The Board also decided to hold hearings whenever they felt the record was insufficient or when further discussions with the parties were deemed desireable. But in order to enact such an approach, the Board expended a great deal of time on each of the

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[106]Valtin, Memorandum, November 8, 1977.

appeals before them.[107,108]

The alternative approach, where the Board would first determine whether an appeal merited review, was discussed by the Board originally and rejected, but was promoted by the parties after the Board had operated for approximately one year. This approach became known as the "cert" approach, making reference to the certiorari doctrine that is utilized by the Supreme Court. The Board refused to be influenced by the parties' urging to alter their original approach, basing their rejection of the "cert" approach on two grounds. The first was the perception of Board members that the Agreement did not grant the Board the authority to adopt the certiorari approach. They felt that the contract provided the parties an appeal right, not simply a right of application for appeal. Therefore, the Board could not deny any party their right to a review of the arbitrator's decision. The second ground on which the certiorari approach was rejected, when proposed by the parties in early 1977, was the Board's belief that the adoption of the certiorari approach would be a drastic change from the Board's original approach and would be

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[107]Waddington, November, 1986.

[108]Robert Benedict, UMWA Representative on the 1974 Arbitration Review Board, Telephone interview, January, 1987.

viewed unfavorably by practitioners in the field and the rank-and-file. The Board felt they would be viewed as having taken arbitrary action in altering their established practice, with the resulting negative sentiments toward the Board outweighing the value of any increase in the volume of cases handled. The Board also felt the certiorari approach might result in oversights of critical underlying principles in those cases rejected without careful consideration.[109]

In addition to the internal decision of the Board to give full review to all appeals, there were external factors that contributed to the large backlog of appeals. The first of these was the previously mentioned delay in making the ARB an operational board, which insured the Board's backlog even before its beginning. In addition, the parties compounded this delay by producing an incredibly high number of panel arbitration decisions, creating a large number of possible appeals. This indicated a lack of willingness by the parties to effectively settle grievances prior to arbitration. The parties also demonstrated little restraint in exercising their appeal right, even in situations where appeals seemed highly unjustified.[110]

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[109]These facts were expressed by all three members of the 1974 ARB: Valtin, Waddington, and Benedict.

[110]Valtin, Memorandum, p.21-24.

The absence of a screening body for either party resulted in the Board having to give each case a full review, regardless of the merits of the appeal. A screening body could have exercised great discretionary power, similar to the certiorari principle, in determining which appeals were forwarded on to the Board, thereby insuring the Board would deal with those cases having significant industry application. Both parties rejected the establishment of screening bodies when establishing the ground rules because they felt there was no legal validity in doing so, given the contractual language that provided the appeal mechanism as a right under the Agreement. Yet, it is ironic that within a year of taking this position, these same parties asked the Board to provide a screening mechanism through the use of the certiorari power.[111]

Practitioners(68%) often cite an additional factor in discussing the low volume in the number of Board decisions rendered under both the 1974 and 1978 Agreements. These parties maintain that the length of Board decisions was often greater than needed to address the issue under appeal, and that the lengthy discussion of the principles set forth in the decision often confused the parties as to the actual impact of the decision. This criticism was directed most frequently at

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[111]Ibid, p. 22.

the 1978 Board, which rendered only 81 decisions during its tenure.[112]

In fairness to the 1978 Board, however, it should be noted that there were two different Chief Umpires during this Board's operation. The first was Paul Selby, who rendered ARB Decisions 78-1 to 78-32, and the second was Richard Bloch, who completed the 1978 Board by issuing ARB Decisions 78-33 to 78-81. Thus, the process of selecting a Chief Umpire had to be undertaken for each of them. In addition, a third Chief Umpire was selected, but never heard an appeal, during this period. Edmund Rollo had been selected by the parties to replace Mr. Selby, but suffered a heart attack prior to conducting his first review. Given the selection process of three Chief Umpires, and the orientation process of the two that actively served, the decline in output of ARB Decisions is more easily understood.[113]

A variety of factors combined to create an environment in which the Board was limited in their attempt to quickly handle the appeals before them. This lack of volume in ARB decisions, with its accompanying delay, is invariably cited by union members and field

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[112]Based on numerous interviews with union and management practitioners.

[113]Paul Selby, first Chief Umpire of the 1978 Arbitration Review Board, Telephone Interview, January, 1987.

representatives in expressing their displeasure with the Board.

RQ 4: In what ways did the First Board, Interim Board, and Second Board differ in their mode of operation?

Although the Arbitration Review Board performed the same basic review functions under the 1974 and 1978 National Agreements, the methods utilized in dispatching these functions were varied under the two Agreements. As a result of the changes made in the ARB during the 1977-78 negotiations, practitioners in the industry often refer to the 1974 Board as the First Board, while referring to the Board under the 1978 Agreement as the Second Board. In addition, the parties established the Interim Board at the expiration of the 1974 Agreement to decide those appeals remaining from the First Board. The authority of the First Board terminated with the expiration of the contract, thus the parties were put in a position of leaving hundreds of appeals undecided, carrying them over to the 1978 Agreement, or developing some alternative method of reaching decisions on the appeals.

They certainly did not want to leave the cases undecided, feeling this would disparage the integrity of

the Board concept, but there was a reluctance to delay action on the cases until the 1978 Agreement became effective. Given the negative attitudes toward the Board by many union members, and their desire to terminate the Board concept entirely, there was no guarantee that there would be a 1978 Board. Sentiment was strong in the union ranks that the Board had been partial to management in their decisions and that abolishment of the Board was the only option for the UMWA. Even assuming the continuation of the Board, however, the parties realized that it was highly undesireable to place the burden of the appeals backlog from the 1974 Agreement on the 1978 Board. This would only perpetuate the time delays that had presented such problems under the 1974 Agreement. Therefore the parties agreed to establish the Interim Board to render decisions on all appeals under the 1974 Agreement existing at the expiration of the Agreement.[114]

The operations of the First Board have been chronicled to a large extent in the responses to the two previous research questions. To provide a ready basis for comparison, however, a brief summary of those findings will be given. There were few guidelines for operation given to the three-member Board by the negotiators, leaving them great latitude in establishing the parameters of operation for the Board. The Board

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[114]Waddington, Telephone Interview, January, 1987.

decided that appeals were a matter of right that could not be removed by the Board's exercise of a certiorari approach. They also agreed to give a full review to each appeal under consideration, reviewing the full record of the arbitration hearing if necessary. In addition, the Board often convened hearings of their own in order to gain a better understanding of the issues and circumstances in each case. The Board also felt it necessary to provide thorough opinions to support their decisions, particularly when the panel arbitrator had been overturned by the Board. All of these operational techniques combined to produce a low relative volume of decisions by the First Board, thus the parties were anxious to make alterations in the method of operations for the Board that was to hear appeals under the 1978 Agreement.

In addition to these operational characteristics, there were additional aspects of the First Board's operation that are important to understand. The negotiators had not been clear as to the role of the BCOA and UMWA representatives on the Board; that is, whether these individuals were to be advocates of their party's position or function as neutrals. The union representative felt his role was to be that of a neutral, and the Board was to operate as a three-person impartial

tribunal.[115] The management representative, on the other hand, from the beginning viewed his role as that of an advocate for the company involved in the appeal, with the Chief Umpire being the true neutral in the decision-making process.[116] The outcome of these disparate views was the use of the advocate approach by both the management and union representative.

Although employing this advocate approach during their review process, the Board decided that the integrity of the Board would be best served by the issuance of unanimous decisions without dissenting opinions. There was concern that any appearance of divisiveness on the Board would be used by parties in the field as a rationale for not complying fully or quickly with the Board's decision. And there was a feeling that the writing of dissenting opinions would serve to negate the precedential nature of the Board's decisions, since panel arbitrators or practitioners could cite the dissent as the basis for actions inconsistent with the Board precedents.[117]

The 1978 National Agreement evidenced significant alterations of the Arbitration Review Board, both in

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[115]Benedict, Interview.

[116]Waddington, January, 1987.

[117]Interviews with all three members of the First Board yielded these results.

composition and in operation. The most fundamental change in the Arbitration Review Board occurring during the 1978 negotiations was the decision to drop the concept of a tripartite Board, replacing it with a Board of one neutral. In effect, this provided the industry with a modified Chief Umpire system that was intended to allow a quicker disposition of cases than was possible when the Board consisted of three members. Since the First Board operated with the union and management representatives in the roles of advocates, rather than neutrals, it could be assumed that the First Board essentially operated in this fashion anyway. But under the Second Board there were fewer hearings in which the BCOA and UMWA representatives could present their arguments. The representatives more often filed briefs with the Chief Umpire stating their positions, and he would review these briefs along with any briefs submitted by the actual disputants in the case. The representatives remained the same, with Waddington acting on behalf of the BCOA and Benedict representing the UMWA.

In an attempt to limit the number of appeals, the negotiators agreed to two important structural changes in the Board's operation. The 1978 National Agreement eliminated the "arbitrary and capricious" criteria for appeal that had been used extensively by the parties during the 1974 Agreement. The parties had viewed this

criteria as a catch-all category to be used whenever the two clearly defined grounds could not be met. The 1978 Agreement did retain the two criteria considered by the parties to be basically objective grounds for appeal. Appeals were to be granted when the decision of a panel arbitrator was in conflict with one or more decisions of other panel arbitrators or previous decisions of the Arbitration Review Board. The second ground provided for appeal when the panel arbitrator's decision involved the interpretation of a substantial contractual issue that had not previously been decided by the Board.

The second meaningful change in the operation of the Board involved the establishment of certiorari power for the Chief Umpire. As previously mentioned, this power was discussed by the First Board and rejected because the Board felt there was no contractual basis for claiming such power. The parties addressed this in the 1978 Agreement, giving the Chief Umpire the right to determine if the issue under appeal was of such critical importance as to warrant review by the Board. The Second Board could refuse to review an appeal simply on the grounds that it was not of critical importance to the industry. This abolished the parties' right to an appeal, replacing it with the right to petition for an appeal, and gave the Chief Umpire an effective tool to quickly dispatch numerous appeals.

The 1978 Agreement also included a "Memorandum of Understanding, Continuance of Arbitration Review Board." In Paragraph No. 7 of this memorandum, the parties authorized the promulgation of administrative and procedural rules to govern the operation of the Arbitration Review Board. Following the settlement and ratification of the Agreement, the parties established a committee to develop these rules. Although the contract was effective on March 27, 1978, these rules did not take effect until November 22, 1978. Any appeals filed, but not decided, prior to the promulgation of the rules, however, had to be refiled under the new rules. These rules, known as the "Administrative and Procedural Rules Governing Petitions for Review and Reviews of Panel Arbitrator Decisions Before the Arbitration Review Board," are attached as Appendix G.

The new rules established time limitations that were designed to insure completion of an appeal within 180 days of the panel arbitrator's decision. Figure 4-1 illustrates the time limitations set forth by the Administrative and Procedural Rules. Not only were time limits provided for the appeal procedure, but the rules also provided for a stay of implementation of the panel arbitrator's decision. The stay of implementation was designed to allow an employer to refrain from immediate compliance with the panel arbitrator's award, pending the

Panel Arbitrator's Decision ----15 Days--- Stay of Implementation

35 Days

5 Days

Petition for Review

Decision on Stay

30 Days

Respondent's Statement
and/or
Withdrawal by UMWA/BCOA

10 Days

Decision to Review ---If Granted---Petitioner's Brief
30 Days

30 Days

Respondent's Brief

15 Days

UMWA/BCOA Intervention

30 Days
(45 Days with a Hearing)

FINAL DECISION

Figure 4-1
TIME LIMITATIONS ESTABLISHED BY THE ADMINISTRATIVE AND PROCEDURAL RULES GOVERNING PETITIONS FOR REVIEW AND REVIEWS OF PANEL ARBITRATOR DECISIONS BEFORE THE ARBITRATION REVIEW BOARD
(Effective Date: November 22, 1978)

appeal of such an award, if such compliance would "inflict serious economic harm to the Employer at the operation involved."[118] This was particularly effective if the panel arbitrator's award called for an irreversible action, such as the building of a new facility. The stay of implementation request had to made within 15 days of the arbitrator's decision, and had to be accompanied by the petition for review. The normal time period given the parties to file their petition for review was 35 days; therefore, the request for a stay of implementation required a forfeiture of the normal time the parties had to consider the consequences of a petition for review. If granted, the stay of implementation was effective until the ARB rendered its final decision on the appeal.

The issuance of the Administrative and Procedural Rules provided greater consistency and uniformity in the appeal process and represented an attempt by the parties to utilize the knowledge gained from the operation of the First Board to improve the mode of operation for the Second Board. Instructions were provided to the parties as to the items and procedures necessary for an appeal, and panel arbitrators were instructed as to the

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[118]Citation from the Administrative and Procedural Rules Governing Petitions for Review and Reviews of Panel Arbitrator Decisions Before the Arbitration Review Board, Issued November 22, 1978, by the BCOA and UMWA.

information the Board wanted entered in the record of the panel arbitration proceedings, which would provide assistance to the Board in hearing appeals. Paragraph 4 of the Rules set forth this information for arbitrators:

> The Board shall provide an outline to panel arbitrators which will set forth those elements which shall be included within the record:
>
> (a) All testimony admitted in the record, including any rulings on objections or exceptions will be recorded by the arbitrator and will be transcribed upon request by the Board.
>
> (b) All supporting exhibits submitted during the arbitration process;
>
> (c) All citations of arbitrations or Board decisions.
>
> (d) All stipulations of fact or contract citations;
>
> (e) All other matters of record upon which the panel arbitrator based his opinion;
>
> (f) Certification by the panel arbitrator that items (a) through (e) above are a true and accurate record of the proceedings before him.[119]

These guidelines provided a certain measure of consistency in the information provided to the Board for review cases, and encouraged arbitrators to be very meticulous in their notation of the conduct of the hearing.

These procedures were intended to provide uniform

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[119]Ibid., p. 4.

and thorough information to the arbitrator in an effort to allow for a quick resolution of any appeal. Although this was to be accomplished partially by reducing the need for a hearing, the UMWA and the BCOA had the right to intervene in the case and present oral and written arguments before the Board. This right was very important to the BCOA because it provided them the opportunity to refute the arguments being made to the Board by the non-BCOA companies that were signatory to the Agreement. These companies had agreed to be bound by the National Agreement after the BCOA and UMWA reached an accord, but did not desire to become part of the BCOA. In some cases, the arguments made to the Board by these companies were viewed by the BCOA as not in the best interest of the industry as a whole. But the BCOA could not utilize their screening mechanism with these companies, thus they were unable to prevent these appeals from coming to the Board. The right of intervention insured the BCOA an opportunity to present the Board their perspective on the industry-wide significance of any appeal.

It is obvious that the parties utilized the knowledge gained from the experience with the First Board to assist them in developing a more efficient mode of operation for the Second Board. The Board also attempted to eliminate the potential of any backlog for the Second

Board by establishing the Interim Board to decide those cases left by the First Board at the expiration of the 1974 Agreement. A new Chief Umpire, Thomas Phelan, was appointed to the Interim Board. The most significant feature of the Interim Board was the agreement by the UMWA and BCOA that the decisions of the Interim Board would not be precedential, being limited to the situations in each case. Since the Interim Board's decisions carried no weight of precedent, there was less need for the Board to consider the long-term consequences of each decision, thus it did not have to develop a detailed rationale to support each decision. In fact, the Interim Board decisions were confined to being one statement decisions, simply stating a denial or granting of the appeal. This allowed the Interim Board to attain its objective by dispatching a large number of decisions in a short period of time. The Interim Board rendered Board decisions 127-415, and operated from March 1, 1978 to December 4, 1978.[120]

RQ 5: Why did the parties opt to have the Second Board comprised of only one arbitrator, thereby placing tremendous authority in the hands of one person?

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[120]Thomas Phelan, Chief Umpire of the Interim Board, Telephone Interview, March, 1987.

The alteration in the structure of the Arbitration Review Board from a tripartite board (First Board) to a one-person "Board" (Second Board) raises questions as to the rationale behind such a move, given the great authority being placed in the hands of the person selected to be the Chief Umpire. This is particularly true if one is unaware of the mode of operation for the First Board, and thus views the First Board as a tripartite board where the management and labor representatives function as neutrals who hear the arbitration case and cast their vote based on the information before them.

As illustrated previously, however, the First Board did not function in this manner. The representatives from the BCOA and UMWA both served the role of advocates for their respective parties, thereby placing the Chief Umpire in the position of being the decision-maker in those cases where there was a lack of unanimity in the decision. Thus the changes made during the 1978 negotiations in going to a one-person Board were not as drastic as they may first appear to someone not familiar with the operating procedures of the First Board. One might argue that the parties were simply formalizing a structure that had informally developed during the First Board's operation.

On the other hand, the structure of the Second Board

should be noted for its impact in two areas. First, the use of one arbitrator to serve in a precedent-setting capacity for an entire industry, without the influence of representatives from both sides, could result in decisions that neither party had anticipated. This would be true particularly in those cases where neither the UMWA nor BCOA exercised their right of intervention before the Board, thereby leaving the Chief Umpire to his own interpretation of the impact of his decision on the industry. It is possible that this interpretation could be much different than the parties had anticipated, since their knowledge of the intricacies of the industry exceeded that of any Chief Umpire, thus providing a different perspective. Therefore, the opportunity for surprises in the decisions of the Board increased with the advent of the Second Board, although it was not considered a serious problem by those citing this possibility. They felt the parties were very sensitive to any appeals having the potential to cause widespread concern in the industry, and monitored the Board closely in this regard. But there was also a feeling that both parties had been surprised by some of the decisions of the Second Board.

Another potential problem arising from the use of a one-person Board was the acceptability of the Board's decisions by those in the field. With the First Board,

those in the field knew that their representatives had impacted the Board decision through their representation on the Board. Although retaining the right to present their positions on any cases before the Second Board, the influence of the parties was not as direct as before. The perception in the coal fields of a Chief Umpire in Washington rendering decisions affecting the entire industry based on his personal perceptions created in some an attitude of cynical acceptance of the Board's decisions. This was more prevalent in the union representatives interviewed than with their management counterparts, quite possibly because a larger number of Board decisions favored management.

Despite these two problem areas, the overall impact of the formal change in the Board's structure was not as radical as may first appear. The move to a one-person Board represented a realization that, with the management and labor representatives of the First Board serving as advocates, the First Board had actually become very similar to this structure. The parties thus felt that a formalization of this structure, with the parties retaining the right of intervention by presenting arguments before the Board, would serve to quicken the overall appeal process.

RQ 6: What were the primary factors resulting in the termination of the Arbitration Review Board?

The termination of the Arbitration Review Board occurred with the expiration of the 1978 National Agreement. The UMWA refused to renew the ARB during the 1981 negotiations, citing the overwhelming desire of their membership for Board termination as the primary factor in their position. A very interesting contradiction arises when one assesses the personal feelings of the union leadership of that time toward the ARB with the formal position they were taking at the bargaining table. The leadership felt bound by the resolution of the 1979 UMWA convention in Denver that called for the abolishment of the ARB, and bargained very strenuously that they could not take a contract to the membership with the Board being extended. Sam Church, then President of the UMWA, felt the Board had been beneficial to the arbitration process in the industry, and had opposed the convention's resolution for the Board's termination. But the political pressure exerted by that resolution, and the position of the 1981 UMWA Bargaining Council in opposition to the ARB, allowed him no flexibility in attempting to modify the Board's operation in an effort to retain the basic concept. His position was that the membership had spoken, and it was

his job as the president of the union to seek at the bargaining table the desires of his membership.[121]

Church was not the only union leader who felt the Board had been beneficial for the coal industry. In talking with district union representatives and members of the UMWA International Executive Board, favorable sentiment for the Arbitration Review Board can be found.[122] These union leaders indicated that the termination of the ARB was the result of a variety of factors combining to exert pressure on the national leadership to terminate the Board. Management representatives seem to share similar views in assessing the causes of the Board's termination.

The political climate within the union during this era was the most often cited reason for the Board's termination (77% of the respondents cited this factor). The national leadership was under severe criticism from dissident factions within the union. Given the democratic reforms within the union, the national leadership was forced to be sensitive to the political ramifications of their positions. In addition, as a result of the majority of Board decisions being rendered

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[121]Sam Church, Telephone Interview, January 16, 1987.

[122]This observation is based on numerous conversations with district representatives and International Executive Board members.

in favor of management, the membership did not feel that the union was receiving fair treatment from the ARB. In a sense, they felt the national leadership had not been successful in monitoring the Board, nor in arguing the merits of the union position before the Board. The importance of the political impact of the ARB is a perception also held by management representatives, as those interviewed consistently cited internal union politics as the primary cause of the Board's termination.

This is not to say that there is an overwhelming belief in the union ranks that the Arbitration Review Board was a better concept than the union had originally believed, for there are some national and district representatives that feel very strongly that the abolishment of the ARB was necessary and should be considered permanaent. Some of the union leaders who share this sentiment were actively involved in the passage of the resolution at the 1979 convention, making the ARB a central issue in their political campaign. They feel very strongly that the membership's action through the convention, coupled with the political success enjoyed by those who sought ARB termination, provided a clear signal that the UMWA had no desire to continue the Board.[123]

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[123]Howard Green, member of the UMWA International Executive Board, Telephone Interview, February, 1987.

Another factor cited by respondents (73%) as contributing to the termination of the ARB was the inclination by both parties to appeal sound arbitration decisions to the Board. To some advocates, the Board became just another step in the grievance process, so little thought was given to the merits of the appeal. The union district representatives were under greater political pressure to pursue such appeals since their positions were elected offices. The petition for appeal could be used to illustrate to the membership the district representative's diligence in representation; and, any negative feelings by the member toward the decision could be deflected by the district representative toward the Board. Management representatives also were guilty of pursuing unworthy appeals in an attempt to illustrate to superiors their extensive efforts in obtaining a favorable decision.

This lack of maturity in dealing with the Board concept contributed to the large number of appeals brought to the Board, and the subsequent dissatisfaction with the long delays experienced in getting a decision from the Board. Some of those interviewed noted that it is ironic that, in many cases, those advocates who so strongly criticized the ARB for its inability to render effective decisions in a timely fashion were the same ones to flood the Board's docket with appeals on

arbitration decisions that were clearly consistent with the Agreement. In essence, these individuals had exacerbated the Board's problems and then utilized the results as proof that the concept of an industry-wide appellate board was deficient.

A final factor that contributed to the termination of the Board was the lack of communication provided to the union membership in regards to the Board's purpose, operation, rationale for decisions, and content of Board decisions. The perception held by most of those in leadership positions in the coal industry was that the Board was to function as a Supreme Court for the coal industry, hearing critically important issues having industry-wide significance. The membership seemed to never grasp this concept, however, focusing instead on the right to appeal any unfavorable arbitration decision. This lack of understanding as to the primary purpose of the Board created an environment in which Board decisions were critically appraised from the wrong perspective.

Most members were only made aware of the Board's decision, not the rationale of that decision. There was very little circulation of the Board decisions among the membership. Although Board decisions were held at the locations of district offices, this provided little accessibility for the rank-and-file member. This also resulted in many members, who lacked knowledge of Board

precedents, exerting pressure on the district representative to carry the panel arbitration decision through the appeal procedure. Thus the intended benefit of having the Board's decision assist the parties at the local levels in settling their grievances did not fully materialize.

The final assessment as to why the ARB was terminated must focus on the political aspects of the grievance and arbitration process in the coal industry, particularly given the politically charged atmosphere of the union during this time period. Although some of the union leaders of the day felt that the ARB was not a viable mechanism, the majority of the UMWA leadership evidenced favorable personal attitudes toward the concept. However, the political realities within the union, both at the district and national levels, exerted pressures on the appellate system that resulted in its termination.

> RQ 7: To what extent have arbitrators been influenced by the ARB precedents, both during its existence and in the years following its termination?

The overriding sentiment of those interviewed was that the industry's panel arbitrators generally adhered to the ARB precedents during the Board's existence (91% of those interviewed expressed this view). This view was shared by former ARB members, arbitrators, and labor and

management practitioners from both sides. When questioned as to the motivation of arbitrators in complying with the Board decisions, two different views were advanced. The majority of the respondents felt that the panel arbitrators adhered to the ARB precedents simply because they were contractually bound to do so, and that it was a matter of professional integrity to operate within the guidelines provided in the Agreement. As one might expect, the vast majority of arbitrators took this position, and former Board members, along with a number of practitioners, agreed with this assessment of arbitral motivation.

A minority view held that the panel arbitrators were motivated to adhere to ARB precedents by the prospect of being overturned by the Board. It is interesting to note that most of those responding in this fashion also felt that compliance with ARB decisions since the Board's termination is motivated by fear of removal from the district panels. This minority also maintained that the method most frequently utilized by an arbitrator to avoid adherence is a finding that the facts of a current situation are substantially different from those of the precedent case, thereby justifying a decision based on the panel arbitrator's interpretation of the Agreement.

Although the overall compliance with Board decisions was considered to be very good, it was noted that some

arbitrators had difficulty in complying with certain Board precedents. For example, ARB 97, dealing with the discharge of a worker for missing two consecutive days without a medical excuse, stated that the arbitrator had no authority to reduce the discharge to a suspension if he determined that the employee had violated Article XXII, Section (i)- Irregular Work. After a lack of compliance in some panel decisions, the Board felt the need to address this issue again in ARB 114, thereby providing a clear interpretation of the Board's position on this issue.

The respondents also felt that arbitrators have generally adhered to Board precedents since the Board's termination. They feel that where a Board precedent clearly addresses a current situation, the panel arbitrator will invariably render a decision consistent with the Board precedent. There was some concern expressed, however, about those situations where language changes in the contract have modified, or nullified, a Board precedent. Some advocates feel that arbitrators, particularly those who came on the panels after the Board's termination, seem to consistently find the Board decisions no longer applicable and base their decision on the language of the current National Agreement. Overall, the parties expressed a strong belief that the ARB was having a residual effect through the consistent adherence

of panel arbitrators to the Board's precedents.

An interesting result emerged when arbitrators were asked how many of the 207 precedent-setting ARB decisions were still of use in deciding cases before them. A wide variety of responses were received, with many responses being preceded by the arbitrator stating that he was unsure of the number. The answers ranged from "all but one or two" to "I would say that from a third to a half are no longer relevant." Practitioners in the industry generally felt that fewer than five ARB decisions were no longer relevant, with modifications to a small number of others reducing their value in supporting arguments to an arbitrator. The majority of arbitrators also felt that it was the advocates responsibility to bring forth the relevant ARB precedents; but, in the absence of the advocates citation of relevant precedents, the arbitrators stated they would consider any precedents they personally felt addressed the case before them.

The general assessment by those interviewed was that arbitrators have continued to adhere to the ARB precedents following the Board's termination, thereby providing consistency on certain issues in the contract. This adherence has been obtained by the voluntary compliance of arbitrators and the removal from district panels of those arbitrators that do not adhere to Board precedents. There was concern expressed about the future

applicability of ARB precedents, since the passage of time provides the possibility that changes in the language of the National Agreement will further weaken the value of the decisions. Several respondents also made reference to certain controversial issues that have emerged since the termination of the Board, citing the lack of a final authority on these issues as creating an environment for arbitration similar to that prior to the ARB when each side would gather as many citations as possible supporting their respective positions.

RQ 8: What is the likelihood that the coal industry will once again employ an appellate review system for arbitration decisions?

Among those interviewed, there was very strong sentiment for the renewal of the Arbitration Review Board, or some modified version of the ARB. This was true of arbitrators, management practitioners, former ARB members, and union practitioners to a lesser extent. The respondents felt that the ARB provided a consistency in the arbitration process in the coal industry that was desperately needed at the time, and that a Board would serve as a positive force today and in the future.

When discussing the revival of the ARB, respondents often discussed their perceptions of the causes of the termination of the Board, citing the failures of the parties to correctly administer the concept. The general

feeling seemed to be that the ARB was an excellent concept that had been poorly applied. Many expressed disappointment that the Board had not been allowed to work through its growing pains, pointing out the short time period involved from the initial 1974 birth of the ARB to its termination in 1981. A failure by the union membership to understand the purpose of the Board prevented them from having any patience with the evolution of the Board concept, and there was a feeling that the strain placed on the Board by the parties excessive arbitration load made its success an impossibility. In short, the sentiment seemed to be that the parties had failed, not the Board.

Despite this favorable sentiment for the reemergence of the Arbitration Review Board, the prospect of its revival evoked a variety of responses. Some respondents (36%) indicated a belief that the revival of the Board is eminent, with the reestablishment of the ARB possibly occurring in the next round of negotiations in 1988. To accompany management's steadfast commitment to the ARB concept, these parties cited a renewed interest within the union ranks for an ARB revival. The driving force behind this renewed interest seems to be a dissatisfaction with the decisions of the panel arbitrators, and the finality of these decisions in the absence of a review body. It appears that the

consistency of the Board, even when the decision is unfavorable, is preferable to being in total reliance on the varying judgement of panel arbitrators. These respondents also felt the current UMWA President Rich Trumka has the political clout necessary to defend a revival of the Board from its detractors should he choose to make the revival of the ARB an item for bargaining during the 1988 negotiations. None of the non-union respondents knew whether the UMWA is planning to include this in their bargaining items, and the union respondents understandably refused to comment about the upcoming negotiations.

Another significant segment of respondents (41%) felt that the Board is needed in the industry, but the political climate within the union is viewed as a continuing obstacle to the Board's revival. These respondents pointed out the political clout obtained by many of those who made the Board the focus of their union political campaigns. These union leaders have reached positions of significant influence within the national union, and could be expected to provide strong resistance should the revival of the Board be suggested.

Summary

In this section the research questions were systematically examined. The primary factor identified

as creating the need for the ARB was the inconsistency in arbitration decisions that existed under the 1971 Agreement. The lack of circulation of arbitration decisions, inconsistency in arbitral quality, a more militant workforce prone to excessive use of the grievance procedure, and the pressures exerted on union district representatives by the democratic reforms within the union in 1972 contributed to this inconsistency in arbitration decisions.

The 14 month delay between the signing of the 1974 Agreement and the beginning of operations for the ARB was found to be a major factor in creating dissatisfaction with the performance of the Board. This delay resulted from the negotiators agreement in principle only to the establishment of the ARB, leaving the details to be determined following ratification of the Agreement. The establishment of groundrules for operation, selection of a Chief Umpire, and selection of panel arbitrators required a much longer period of time than the parties had originally estimated.

The relatively low output of the Board during its existence, 207 total decisions, was the result of the parties excessive use of the appeal right, the lack of an effective screening mechanism that could have prevented frivolous appeals, and the Board's belief that the contract called for complete reviews of any appeals

before them. Additionally, practitioners cite the length of Board decisions as a factor in the ARB's low output, claiming that the Board's opinions often exceeded what was necessary to adequately address the case before them.

The structure and mode of operation of the First Board, Interim Board, and Second Board was markedly different. The First Board was comprised of three members, while the Interim Board and Second Board both had only one member, the Chief Umpire. Although the First Board was a tripartite board, the representatives from the UMWA and the BCOA functioned as advocates of their respective parties. The Interim Board's decisions were not precedential for the industry, as were the decisions of the First and Second Board, since the Interim Board was a temporary Board designed to clear the backlog of cases remaining from the 1974 contract. The Second Board enjoyed a more effective screening process and the right to refuse appeals if the Board felt they lacked industry-wide significance. The parties also issued a thorough set of Administrative and Procedural Rules to govern the appeal process under the Second Board.

The ARB was terminated in 1981 with the expiration of the 1978 Agreement. The union membership perceived the ARB as having failed to fulfill its anticipated promise and sought the termination of the Board during

the 1979 national convention. Excessive arbitration, and the subsequent appeals, proved to be too stressful for the ARB to effectively function as intended. The political climate within the union was such that the leadership felt compelled to acquiesce to the membership's desires, although the leadership of that period indicated support for the ARB concept.

Those individuals interviewed felt the ARB had a significant impact on the arbitration process in the coal industry, both during its existence and following its termination, by providing the desired consistency in arbitration decisions. There was concern expressed about the future applicability of Board precedents, however, since the passage of time creates the possibility that contractual negotiations will negate the significance of ARB precedents.

Overall, there was positive sentiment for the renewal of the ARB, either in its prior form or in some modified format. Many respondents expressed a belief that the termination of the Board was a mistake that the parties should attempt to rectify, but views were mixed as to the possibility of a revival of the ARB in the near future. Some respondents see the ARB as being a viable topic for the 1988 contractual negotiations, while others felt the political climate within the union would still prevent the revival of the Board.

Analysis of Arbitration Decisions

The results of the content analysis and adherence classification of the selected arbitration decisions are presented in this section. Sixty arbitration decisions were randomly selected for each of five years-- 1977, 1979, 1981, 1983, and 1985, yielding a total sample of 300 decisions for analysis. The decisions were analyzed for their degree of adherence to Arbitration Review Board precedents and were placed in one of the four categories described in Chapter Three.

In order to assess the reliability of the classification process conducted by the investigator, four experts were employed as reviewers of a subsample of the decisions. Each expert classified 15 decisions, independent of any influence from the investigator or one another. There was a high degree of agreement between the classifications of the investigator and those of the reviewers. The experts agreed with the classification of the researcher in 93.3 percent of the cases. Experts One and Two agreed with the investigator in 93.3 percent of the decisions, Expert Three agreed in 86.7 percent of the decisions, and Expert Four had 100 percent agreement with the investigator. The results of this review process for each case in the subsample are presented in Table 4-1.

A classification deserving explanation occurred with

TABLE 4-1

Adherence Classification of Decisions for Researcher and Review Panel of Experts

Decision A.R.B. Number	Researcher	Expert One	Expert Two	Expert Three	Expert Four
84-26-05-?4	1		1		1
84-17-85-29	1			1	1
84-31-85-24	1	1		1	
84-12-85-121	1		1		1
83-4-81-77	1	1		1	
81-30-82-427	1	1	1		
81-6-83-684	1	1		1	
81-12-83-866	1		1		1
81-2-17	1		1		1
81-6-81-56	1			1	1
78-6-81-914	1	1	1		
KD-79-17-151	1	1	1		
78-29-79-341	1			1	1
78-14-79-19	1	1		1	
17-77-1367	1	4 *	1		
84-12-85-77	2	2		2	
84-30-85-115	2			2	2
81-28-83-175	2		2		2
81-12-83-851	2	2	2		
81-12-81-973	2	2		2	
78-28-80-403	2	2	2		
6-77-705	2		2		2
78-29-79-290	2			2	2
78-29-78-177	2	2		2	
23-77-197	2			1 *	2
22-77-30	2	2	2		
28-77-322	2		2		2
HC-30-80-133	3		NA *		3
81-12-83-804	3			2 *	3
78-28-79-219	4	4		4	
% Agreement with Researcher		93.3%	93.3%	86.7%	100%

* Denotes disagreement between Researcher and Expert
NA None Applicable

Expert Two who classified one case as a "NA", meaning that he felt that none of the classifications were appropriate for this case. Upon discussion with this researcher, the expert expressed the belief that the arbitrator's use of grievance mediation prevented the assignment of the decision into one of the four designated classifications. Expert Three, on the other hand, had no hesitation in classifying this decision consistent with the classification assigned by the investigator.

The overall consistency between the investigator and the experts in the classification of the arbitration decisions provided the basis for substantial confidence in the classification process. Given the fact that there were only 4 cases from the 30 case subsample in which one expert disagreed with the investigator, and no cases in which both experts disagreed with the classification of the investigator, the interrater reliability of the classification procedures was firmly established. High interrater reliability is a standard for determining reliability for content analysis.[124]

Testing of Hypotheses

In Chapter III the hypotheses to be tested were developed and set forth. Both Hypotheses 1 and

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[124]Weber, p. 17.

Hypotheses 2 deal with the degree of adherence by arbitrators with the Arbitration Review Board precedents:

> H1: The extent to which arbitrators relied on ARB precedents increased as the Board's longevity increased.
>
> H2: Following the elimination of the Arbitration Review Board in 1981, arbitrator reliance on ARB precedents decreased with the passage of time.

The results of the adherence classification process were utilized to test these hypotheses. The frequency distribution resulting from the classification of the 300 arbitration decisions is summarized in Table 4-2. Of the 300 arbitration decisions analyzed and classified based on their adherence to Arbitration Review Board precedents, 147 (49%) were placed in Classification 1, 128 (42.7%) in Classification 2, 19 (6.3%) in Classification 3, and 6 (2%) in Classification 4. Given that the data collected were in the form of a frequency distribution, the desired statistic of analysis was Chi-square.[125] The Chi-square analysis was selected in order to allow an assessment of the relationship between the variables under analysis - the years selected for analysis and the adherence classification. The frequency distribution of the data across four

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[125]Graham J. G. Upton, The Analysis of Cross-tabulated Data, (New York: John Wiley & Sons, 1978), pp. 23-29.

TABLE 4-2

Observed Frequencies for Adherence Classifications

	CLASSIFICATION				
YEAR	1	2	3	4	Total
1977	20	32	5	3	60
1979	20	34	5	1	60
1981	34	20	5	1	60
1983	34	21	4	1	60
1985	39	21	0	0	60
Total	147	128	19	6	300

classifications, however, resulted in expected values less than five for 50 percent of the cells of Table 4-2. This presented a problem in analysis of the data since the generally accepted criteria is that the expected values of the cells under analysis should be at least five to insure the accuracy of the Chi-square statistic. In order to address this problem, Classifications 3 and 4 were collapsed into one joint classification, named Classification 3-4. This technique is justifiable in this instance since both Classifications 3 and 4 address nonadherence by arbitrators to ARB decisions.[126] Thus all of those decisions contained in the combined Classification 3-4 are cases in which the arbitrator failed to adhere to the ARB precedents. The results of the Chi-square analysis are found in Table 4-3, with expected values given in parentheses.

Computation of the Chi-square statistic yielded a value of 25.02, which is significant at the .01 level. Given this indication of association between the variables, the standardized residuals for each cell in the contingency table were computed to determine those cells providing the greatest contribution to the significant Chi-square. The standardized residuals are presented in Table 4-4.

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[126]Alan Agresti, Analysis of Ordinal Categorical Data, (New York: John Wiley & Sons, 1984), pp. 10-11.

TABLE 4-3

Chi-Square Test for Arbitration Adherence Analysis

	CLASSIFICATION			
YEAR	1	2	3-4	Total
1977	20 (29.4)	32 (25.6)	8 (5)	60
1979	20 (29.4)	34 (25.6)	6 (5)	60
1981	34 (29.4)	20 (25.6)	6 (5)	60
1983	34 (29.4)	21 (25.6)	5 (5)	60
1985	39 (29.4)	21 (25.6)	0 (5)	60
Total	147	128	25	300

Chi-square = 25.0194

Significant at the 0.01 level

TABLE 4-4

Standardized Residuals for Chi-square Analysis of Frequency Distribution

	CLASSIFICATION		
YEAR	1	2	3-4
1977	-1.7337	1.2649	1.3416
1979	-1.7337	1.6602	0.4472
1981	0.8484	-1.1068	0.4472
1983	0.8484	-0.9092	0.0000
1985	1.7706	-0.9092	-2.2360

Analysis of the standardized residuals in this situation yields an interesting result. Standardized residuals are normally considered significant at the .05 level when the absolute value of the residual exceeds 1.96.[127] Utilizing this approach, only one of the cells in the contingency table appears to be significant in contribution to the Chi-square. Further analysis of the residuals, however, indicates a contribution from several additional cells that approach but do not exceed this level. Thus the significance of the Chi-square in this situation is the combined result of cell variances across several cells, not the result of one or two cells.

Another benefit of calculating the residuals in this case is the evidence presented illustrating the trend in variances for each classification. The residuals from 1977-1985 for Classification 1 initially indicate a strong negative variance between the expected and observed values (1977 & 1979), then exhibit a moderate positive variance (1981 & 1983), and finally produces a strong positive variance. This illustrates an increasing trend toward strict adherence to ARB decisions by arbitrators.

On the other hand, an analysis of the residuals for combined Classification 3-4, those decisions showing

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[127]B.S. Everitt, The Analysis of Contingency Tables, (New York: John Wiley & Sons Inc., 1977), p. 47.

nonadherence to ARB precedents, indicates the opposite trend. Initially a relatively strong positive variance between the expected and observed values (1977), the residuals first move toward a slight positive variance (1979 & 1981), then to zero variance (1983), culminating with a significant negative variance (1985). The trend of this data confirms the pattern found for Classification 1 since it indicates a movement away from nonadherence by arbitrators in the industry.

The data for Classification 2 presents a more enigmatic picture for interpretation. The residual for 1977 indicates a positive variance between the expected and observed values, with the residual for 1979 evidencing a further move in this direction. This indicates that arbitrators adhered to the principles of ARB decisions during this period, without utilizing the citation of such decisions. However, this trend was sharply reversed in 1981, with the negative variances stabilizing for 1983 and 1985. The negative variances for these years must be evaluated in light of the residuals for the two other classifications, since the movement away from adherence in principle could be evaluated as a positive or negative development, depending on the direction of such movement. Given the analysis of the data for Classification 1 and Classification 3-4, this movement in Classification 2

indicates the overall trend was toward strict adherence rather than nonadherence to ARB decisions.

In light of these findings, Hypotheses 1 is supported. The data supports the premise that arbitrator reliance on ARB decisions increased as the Board's longevity increased. On the other hand, Hypotheses 2 is not supported since arbitrator reliance on ARB decisions did not decrease following the termination of the Board, but actually increased during this period.

Hypothesis 3 was set forth as follows:

> H3a: Following the initial increase in the arbitration rate after the Board's inception, there was a decline in the arbitration rate prior to the termination of the ARB in 1981.
>
> H3b: Following the termination of the ARB, there has been an increase in the arbitration rate.

In order to evaluate Hypotheses 3, arbitration data were collected for each of the five years under analysis for the previous hypotheses. Also, information on the total employee hours per year was used as a control measure to remove the influence of production levels on the arbitration rate. The arbitration data were then expressed in terms of the "Number of Arbitration Cases per 100 Million Employee Hours". These data are summarized in Table 4-5.

The results of this analysis support Hypothesis 3a,

TABLE 4-5

Arbitration Activity for Bituminous Coal (1977-1985)

Year	Number of Arbitration Decisions	Total Employee Hours (100 M)	Decisions per 100 M Employee Hrs.	% Change
1977	1823	3.854	473.0	---
1979	1475	4.549	324.2	-31.5
1981	1317	4.163	316.3	- 2.4
1983	1326	3.429	386.7	+22.3
1985	1114	3.517	316.7	-18.1

Data Sources:

Arbitration Decisions obtained from Coal Labor, Inc., Bluefield, West Virginia.

Data for Total Employee Hours obtained from the Health and Safety Analysis Center of the Mine Safety and Health Administration, Denver, Colorado.

as there is a remarkable decline (-31.55%) in the arbitration rate from 1977 to 1979, with nearly a third fewer arbitration cases for 1979 than in 1977. A further decline is evidenced from 1979 to 1981, and although not nearly as dramatic as the previous decline, 1981 exhibits the lowest level of arbitration activity for any of the years under analysis. The decline in arbitration activity sought by the implementation of the Arbitration Review Board appears to have been accomplished by 1981, ironically the year of the Board's termination.

Hypothesis 3b, which postulates an increase in the number of arbitration cases following the Board's termination, is partially supported by the data presented in Table 4-5, particularly the rate of arbitration for the year of 1983. The increase of 22.3 percent in arbitration activity for 1983 as compared to 1981 illustrates a sharp reversal of the trend for previous years, and provides support to the hypothesis. The data for 1985, however, illustrates a return to the arbitration levels of 1981, with a decline of 18.1 percent from the 1983 level. Thus there are mixed signals with respect to the rate of arbitration activity following the Board's termination.

Summary

The results of the content analysis and adherence classification of selected arbitration decisions are presented and analyzed in this section. To assess the reliability of the researcher's classification process, four coal industry labor relations specialists were employed as independent reviewers of a subsample of the decisions. The reviewers agreed with the investigator in 93.3% of the cases.

The 300 selected arbitration decisions were analyzed and classified, with the results being subjected to a Chi-Square analysis. The Chi-Square analysis yielded a significant result at the 0.01 level. Standardized residuals were then computed for each cell in the contingency table, allowing for an assessment of the contribution of each cell to the overall variance. These data were utilized in testing Hypotheses 1 & 2. To test Hypotheses 3a & 3b, data on arbitration volume were collected for each of the five years under study. A control was established for the level of production in each year to insure an accurate reflection of the role played by the industrial relations system in impacting the arbitration level.

Hypothesis 1, holding that arbitrator reliance on ARB decisions increased as the Board's longevity increased, was supported. Hypothesis 2, which stated

that arbitrator reliance on ARB decisions decreased following the termination of the Board, was rejected. Hypothesis 3a was supported, indicating a decline in the arbitration rate during the ARB's existence; while hypothesis 3b, which postulated an increase in the arbitration rate following the Board's termination was partially supported.

CHAPTER V

DISCUSSION

Summary

This study presents a complete analysis of the Arbitration Review Board experience in the bituminous coal industry. To achieve this objective, an extensive qualitative assessment of the ARB was conducted; and, an empirical analysis of arbitration decisions was performed to determine the extent to which arbitrators have adhered to the precedents of the Board. The qualitative assessment involved the development of eight research questions which embraced all facets of the Board's operation and termination, with information being collected to address these questions by the extensive interviewing of former Board members, arbitrators, and practitioners in the bituminous coal industry, as well as the review of industry documents not previously published. A total of forty-four individuals were interviewed, including all five persons having served on the ARB, fourteen arbitrators, thirteen management representatives, and twelve union representatives.

To conduct the empirical analysis, 300 arbitration decisions, 60 from five different years spanning the time period of the ARB experience, were randomly selected and

analyzed as to their adherence to Board precedents. This required the development of an adherence classification system which included various levels of adherence by arbitrators to Board decisions. An expert panel comprised of coal industry practitioners was utilized to review a subsample of the cases analyzed by the investigator, without any knowledge of his analysis of those cases, in order to assess the reliability of his findings. The experts agreed with the classification of the investigator in 93.3 percent of the cases reviewed.

The frequency distribution of the adherence classification was subjected to a Chi-square analysis, which indicated a significant association between the two variables in the contingency table, the variables being the year of decision and the adherence classification. Standardized residuals were calculated for each cell in the contingency table in an attempt to determine which cells were contributing the greatest amount to the significant Chi-square value. Trends were discerned for the various classifications which indicated an increasing adherence over time to ARB precedents by the panel arbitrators in the industry.

Support was indicated for the hypothesized increase in arbitral adherence to Board decisions as the Board's longevity increased. The hypothesized decrease in adherence since the Board's termination, however, was not

supported by the evidence. On the contrary, the adherence level of arbitrators has continued to increase since the termination of the Board. An additional hypothesis, stating that the arbitration rate in bituminous coal declined during the existence of the ARB, was supported by the data. The final hypothesis, which indicated an increase in the arbitration rate since the termination of the Board, received partial support from the results of the analysis, but was not conclusively supported.

Conclusions

Conclusions may be drawn from both the qualitative assessment of the Arbitration Review Board and the empirical analysis of arbitration decisions.

1. The most significant conclusion evidenced by the information collected in the qualitative assessment is that the ARB fulfilled its objective of providing consistency in the arbitration decisions in the coal industry. The vast majority of those interviewed felt that, during the time of existence of the ARB, the Board completed its Supreme Court function exceedingly well in serving as the final authority on disputed issues. Furthermore, the residual impact of the Board during the period since its termination is considered to be substantial. Although not completely satisfied in all

cases, the parties express general satisfaction with arbitrator adherence to the ARB precedents following Board termination.

2. A second conclusion of the qualitative assessment is that the need for the Arbitration Review Board existed as a result of the tremendous inconsistency in the decisions of ad hoc arbitrators in the years prior to the 1974 National Agreement. The implementation of the Arbitration Review Board was an attempt by the BCOA and UMWA to regain control of their arbitration process by providing a board of final authority to address those issues that had been repeatedly arbitrated. In effect, the parties viewed the ARB as the Supreme Court of arbitration for the industry.

3. Another conclusion to be drawn from the qualitative assessment is that the implementation of the Arbitration Review Board was seriously flawed. The lack of attention given to the structural and administrative necessities of such a Board by the negotiators of the 1974 Agreement created an environment which hindered the possibility of success for the Board. The agreement to a Board in principle, without the requisite conceptualization of the guidelines for operation, resulted in the 14 month delay in commencing Board deliberations.

4. This initial delay in the processing of appeals, combined with the excessive appeal rate during the 1974

Board, provides the basis for another conclusion. The deficiency in timely decisions by the ARB seriously damaged its credibility with participants in the field. In an industry that had traditionally placed a premium on timely arbitration decisions, the delay encountered at the appellate level was far too excessive to be acceptable. The discontent within the union created by the delay in receiving decisions from the Board contributed directly to the political pressure placed on the union leadership to seek the termination of the ARB.

5. The termination of the ARB was a result of the union membership's dissatisfaction with the Board's operation and decisions combining with the political climate within the union at the close of the 1978 National Agreement to create extreme pressures on the Board concept. Although personally supporting the Board's continuance, the union leadership did not have the necessary political strength to salvage the Board. Despite the advantages the industry had realized from consistent arbitration decisions resulting from the ARB system, the political expediency of seeking Board termination became the overriding consideration.

6. Although no definite conclusion can be drawn as to the probability that the ARB will be revived, the high degree of favorable sentiment toward such a revival indicates that reestablishment of the Board is advocated

by former ARB members, arbitrators, and advocates. The uncertainity of the feelings of the current union leadership toward revival of the ARB, however, prevents the formulation of a conclusion predicting ARB renewal in the near future.

The empirical data confirms the conclusion of the qualitative assessment that the ARB has had a significant stabilizing impact on the coal industry's arbitration process. Arbitrator adherence with ARB precedents has increased over time, even during the period following the Board's termination. The gains in obtaining consistent arbitration decisions in the industry have not been lost as a result of the Board's termination. In addition, the data concerning arbitration rates indicates support for the belief that an active review board can reduce the level of arbitration in the industry.

Limitations of the Study

In any research endeavor, limitations of the research become apparent as the research progresses.

The use of interviews to collect information for the qualitative assessment creates a concern about the consistency of the data collection method from one respondent to another. Although the interviews were structured to limit this possibility, the very nature of the process insures that a certain amount of variation in

the procedure will occur. An additional concern in this approach is the interpretation by the investigator of the information provided by the respondent. The individual experiences of the investigator may serve to influence his interpretation of the responses. To the extent that this occurs, it reduces the value of the results of the study.

Another limitation of the study is that certain individuals who could have provided valuable information are no longer living, thus their perspective is lost. This is vividly illustrated in the case of Arnold Miller, the president of the UMWA during the formation of the ARB, and is true for other individuals as well. In this same vein, it must be remembered that the respondents were asked to recall events that occurred up to fifteen years earlier, and the recollection of these events may have been tarnished by the passage of time.

Also, the lack of information concerning arbitrator characteristics (i.e. experience in coal arbitration, experience in other industries, education, etc.) prevented an analysis of whether adherence/nonadherence is associated with certain arbitrator variables, or the interaction of such variables with situational factors. This information would have provided additional insight to the study.

Implications

The audience for which this study has the most obvious implications is the coal industry itself. Having established and terminated the Arbitration Review Board, and retained its precedents, the results of this study provide valuable information to the industry as to the effectiveness of the ARB in bringing about consistency in the arbitration process for that industry.

These results are particularly instructive as the parties consider their bargaining items for the 1988 negotiations. This study provides the first empirical evidence of the Board's dramatic impact on the industry, and provides valuable support for those seeking reinstatement of the Board. This is particularly true when this study's results are considered in conjunction with the increasing number of items placed in the contract after the Board's termination. These items have never been the subject of Board review, thus there are no controlling decisions for them; and, this invites the parties to return to the method of continually arbitrating the same issues. Advocates of the Board who wish to avoid such a development will find the results of this study to be of value.

Parties outside the coal industry that consider the implementation of an internal review process also will benefit from this research. Information provided by this

research as to the environmental factors surrounding the Board's inception and termination, the mistakes made in the implementation of the ARB concept, and the positive contribution made to the industry by the Board will be beneficial to those parties.

This research is also valuable to academic researchers, particularly those in the field of industrial relations, in that it provides a comprehensive view of a unique experiment in arbitration that had been overlooked previously in the literature. Not only will the results of this study provide valuable insights concerning the ARB, but they will serve also as a catalyst for further research on the Board. In addition, the results of this study can be utilized to provide a contrast between the ARB system in the coal industry and other systems of interest to researchers.

Finally, the arbitration community will find the results of this research of interest in that they are provided with an analysis of arbitral behavior when confronted with contractually binding precedents. The proper use of precedent decisions is a topic of great concern to arbitrators, and the extension of the precedent-setting principle to contractually binding decisions of the Board creates an arbitral environment worthy of their scrutiny. Additionally, the operational characteristics of the ARB is of concern to those

arbitrators having an interest in becoming active in coal arbitration. Furthermore the possibility exists that other industries may choose to employ a system similar to the ARB, thus arbitrators will benefit from a thorough understanding of the Arbitration Review Board experience.

Future Research

The results of the present research indicate the existence of additional areas related to this topic worthy of future study. An examination of arbitrator characteristics is in order to determine if arbitral adherence behavior can be explained by such characteristics. Such a research effort would take into account the impact of arbitral adherence to ARB precedents as these relate to arbitrator acceptability. Investigation of the turnover rate for various district panels, to determine any similarities in adherence behavior among those arbitrators dismissed from the panels, also could prove valuable in this respect.

Another aspect of the ARB experience that deserves additional attention is an assessment of arbitral adherence specifically on the critical issues confronting the industry. The current study assesses the overall degree of adherence to ARB decisions, but the examination of adherence on particular issues could provide a different and unique perspective. While the general

level of adherence is high, it may be possible that arbitrators are adhering more closely to ARB precedents on certain issues rather than others.

Attention should be given to the contrasts in arbitrator behavior under the ARB system and the precedent-adherence behavior exhibited by these same arbitrators in other systems. Many of the arbitrators in the coal industry regularly arbitrate in other industries as well, making this research a distinct possibility. Of particular interest would be the contrast of ARB behavior with that exhibited in those systems having a Chief Umpire who reviews the decisions of Associate Umpires. This provides a contrast between a review occurring after one of the parties has appealed a decision rendered to them, and a review which takes place prior to the decision going to the parties.

The final area suggested for future research is to assess the viability of utilizing an appellate review system to increase the acceptability of inexperienced arbitrators. The Review Board, acting as the Supreme Court, could be comprised of experienced arbitrators familiar to the parties; while the inexperienced arbitrators would serve as panel arbitrators. Such a system could possibly provide quicker, less costly decisions, since the parties would not have the delays or costs normally associated with using the experienced

arbitrators. Also, the negative implications of a poor decision by the panel arbitrator can be corrected by the more experienced arbitrators on the Review Board.

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APPENDIX A

National Bituminous Coal Wage Agreement of 1974

Article XXIII: Section (b)
Arbitration Review Board

(1) Within 60 days following the effective date of this Agreement, the United Mine Workers of America and the Bituminous Coal Operators' Association will establish an Arbitration Review Board composed of one representative of the UMWA, one representative of the Employer, and a chief umpire to be jointly selected by both parties. This 60 day period may be extended by mutual agreement.

(2) The chief umpire jointly selected by the parties shall serve for the balance of this Agreement, unless removed by formal resolution adopted by either the International Executive Board of the United Mine Workers of America or the Board of Directors of the Bituminous Coal Operators' Association.

(3) In the event of removal, resignation, death or incapacity of the chief umpire, the president of the UMWA and the president of the B.C.O.A. shall endeavor to select a mutually acceptable successor within 15 days. In the event the parties fail to agree, they shall request the aid of the Federal Mediation and Conciliation Service in selecting a mutually acceptable successor. The composition of the panel may be considered by the parties at the time when renewal agreements age being negotiated.

(4) The presidents of the UMWA International Union and the B.C.O.A. shall jointly establish a panel of impartial arbitrators for each UMWA district. These panels may be changed, augmented or supplemented by mutual consent of the appointing parties. Arbitrators may be removed from a panel by either party upon 10 days advance written notice.

Article XXIII: Section (c)- Grievance Procedure

Should differences arise between the Mine Workers and the Employer as to meaning and application of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences at the

earliest practicable time.

Disputes arising under this Agreement shall be resolved as follows:

(1) The Employee will make his complaint to his immediate foreman who shall have the authority to settle the matter. The foreman will notify the Employee of his decision within 24 hours following the day when the complaint is made.

(2) If no agreement is reached between the Employee and his foreman, the complaint shall be taken up within 7 working days of the foreman's decision by the mine committee and mine management. Where the committee consists of more than three members, the Employer shall have the right to meet with a maximum of three (to be chosen by the mine committee). The committee and management will complete the standard grievance form stating the Employee's grievance and the response of management.

(3) If no agreement is reached by the committee and management within 7 working days after the complaint is taken up by them, the grievance shall be referred to a representative of the UMWA district, designated by the Union, and a representative of the Employer. Within 7 working days of the time the grievance is referred to them, the representative of the Union and the Employer shall review the facts and pertinent contract provisions in an effort to reach agreement. Unless both parties consent, no verbatim, transcript of testimony shall be taken. Following the meeting, should they fail to settle the grievance, the representatives shall prepare a concise, joint statement. In the joint statement the Union and Employer will each set forth its views of the facts and its position on the contractual issues. The joint statement shall be signed by the representative of the UMWA district and the representative of the Employer. Neither the Union's representative nor the Employer's shall be persons who participated in steps one or two of this procedure.

(4) In cases where the district representative and the representative of the Employer fail to reach agreement, the matter shall, within 10 calendar days after referral to them, be referred to the appropriate panel arbitrator who shall decide the case without delay. Cases shall be assigned to panel arbitrators in rotation. Unless testimony has been taken at step 3, at the earliest possible time, but no later than 15 days after referral to him, the arbitrator shall conduct a hearing in order

to hear testimony, receive evidence and consider arguments. In cases where a transcript has been made at step 3, the arbitrator shall have the discretion to conduct a supplementary hearing at or near the mine site. In cases in which the parties have made no transcript at step 3, and the joint statement indicates that there is no question of fact involved in the grievance, the arbitrator may decide the case without a transcript and upon the basis of the joint statement of the parties, exhibits and briefs. The arbitrator's decision shall be final except as provided in paragraph 5 herein, and shall govern only the dispute before him. Expenses and fees incident to the service of an arbitrator shall be paid equally by the Employer or Employers affected and by the UMWA district affected.

(5) Either party to an arbitration, upon receiving a final award by a panel arbitrator, may petition the Arbitration Review Board to appeal the decision of the panel arbitrator. Such petition shall include a statement of the grounds for the appeal, which shall consist of one or more of the following:

(i) That the dicision of the panel arbitrator is in conflict with one or more decisions on the same issue of contract interpretation by other panel arbitrators.

(ii) That the decision involves a question of contract interpretation which has not previously been decided by the Board, and which in the opinion of the Boardinvolves the interpretation of a substantial contractual issue.

(iii) That the decision is arbitrary and capricious, or fraudulent, and therefore, must be set aside.

Upon receipt of such petition, the Arbitration Review Board shall review the decision of the panel arbitrator to determine whether grounds for appeal exist. If not, the Board will so inform the parties. If so, the Board shall review the decision of the panel arbitrator making whatever changes are necessary to assure that the final decision correctly resolves all contractual questions issues presented, and is consistent with prior decisions of the Board. The Board's decision shall be made by majority vote, and it shall issue its decision within fifteen days. Following review, the Board shall countersign its decision and transmit a copy to each party.

APPENDIX B

Listing of Persons Interviewed

Former Members of the Arbitration Review Board

: UMWA International Office, Washington, DC

Arbitrator, Washington, DC

Arbitrator, Morgantown, WV

Arbitrator, Washington, DC

Vice-President of Labor Relations- BCOA

Arbitrators

Fairfield, OH

Pittsburgh, PA

Latrobe, PA

Cleveland, OH

Stamford, CT

Louisville, KY

W. Cape May, NJ

Louisville, KY

South Pines, NC

Pittsburg, PA

Morgantown, WV

Indianapolis, IN

Louisville, KY

Williamsburg, VA

Management Representatives

Mgr. of Industrial Relations, LTV Coal, Coalwood, WV

Mgr. of Industrial Relations, Cannelton Coal Co., Charleston, WV

President, Labor Relations Associates, Charleston, WV

Personnel Director, Jno McCall Coal Co., Bluefield, WV

Regional Mgr. of Industrial Relations, Consolidation Coal Co., Bluefield, WV

Industrial Relations Supervisor, Consolidation Coal Co., Bluefield, WV

Mgr. of Labor Relations, Pittston Coal Co., Lebanon, VA

Labor Relations Consultant, Coal Labor, Inc., Bluefield, WV

VA Division Mgr. of Industrial Relations, Island Creek Coal Co., Oakwood, VA

Director of Industrial Relations, Eastern Associated Coal Co., Beckley, WV

Director of Human Resources, Pittston Coal Co., Lebanon, VA

Mgr. of Labor Relations, Peabody Coal Co., Charleston, WV

, President, Coal Labor, Inc., Bluefield, WV

Union Representatives

President, District 6

UMWA President Emiritus, District Rep., District 28

President, District 31

International Executive Board Member, District 17

District Rep., District 12

President, District 4

International Executive Board Member, District 28

Contract Department, UMWA International Office,

International Executive Board Member, District 29

District Rep., District 22

District Rep., District 29

District 29 Executive Board

APPENDIX C

Interview Schedule: Examining the Arbitration Review Board

The following questions are intended to provide information on the inception, operation, termination, and impact of the bituminous coal industry's Arbitration Review Board. This survey is part of a research effort currently being conducted at Virginia Tech which is attempting to accomplish the following: 1) Provide a complete qualitative and quantitative analysis of the ARB, and 2) Examine the applicability of such an arbitration appellate system to other industries. These questions are being asked of a variety of persons (including former ARB members, arbitrators, and practitioners) who have knowledge of the ARB and its impact on the arbitration process in the coal industry. Your cooperation in responding to these questions is greatly appreciated, and results of the survey are available upon request from the Industrial Relations Department at Virginia Tech.

1. What caused the BCOA and UMWA, in the early 1970s, to consider the implementation of a system of appeals for arbitration decisions in the coal industry?

2. Were there any factors unique to this time period that made the concept of an arbitration review board more acceptable to the parties than it might have been at some previous time?

3. Did the parties consider any alternative methods to revising the traditional arbitration system, such as the use of a "permanent" arbitrator at each location or tripartite panels on a district basis?

4. What problems did the parties encounter in trying to make the ARB operational, since there was a 14 month delay from the signing of the contract and the beginning of operation of the Board?

5. During the 1974 negotiations, did the parties discuss the details concerning the operation of the ARB or did they agree only to the concept, leaving the details undecided?

6. By what procedure were the members of the First Board selected?

7. What was the procedure utilized by the parties in making an appeal of an arbitration decision?

8. What was the Board's normal procedure when considering an appeal?

9. Why did the ARB render only 207 total precedent decisions during two contractual periods, 126 by the First Board and 81 by the Second Board?

10. Could the ARB have altered their method of operation in order to increase the number of decisions rendered? If so, how?

11. Why were the Interim Board decisions not given the power of becoming precedent setting decisions?

12. In what ways did the Interim Board differ from the ARB that allowed so many appeals to be decided in such a short period?

13. To what extent have arbitrators been influenced by the decisions of the Interim Board?

14. Why did the parties decide to change the ARB from a three member tri-partite board to a "board" having only one member- an arbitrator?

15. Was any consideration given to having a three-member board comprised entirely of neutrals?

16. Did the Second Board operate more efficiently than the First ARB? If so, in what ways, and what were the factors contributing to the improved efficiency?

17. Which party pushed for the termination of the ARB, management or the union; or was the termination sought equally by both parties?

18. What were the reasons given by those suggesting termination of the ARB to support their position?

19. If the ARB was considered unworthy of continuance, why did the parties agree to continue the precedent-setting nature of its 207 decisions?

20. Did arbitrators quickly begin to follow ARB precedents, or was there a time lag between the issuance of decisions and adherence to these precedents by arbitrators?

21. To what extent did arbitrators follow ARB precedents during the Board's existence?

22. Since the termination of the ARB, have arbitrators continued to adhere to the precedent decisions? If so, to what extent?

23. Since there is no longer a review board, what mechanisms are available to the parties to insure that arbitrators will abide by the precedents?

24. In those cases where precedents are followed, which occurs most frequently: 1) Citation of the ARB precedent by the arbitrator in supporting his decision, or 2) Adherence to the principle established in precedent-setting ARB decisions without actual citation of the precedents that may apply?

25. What is the likelihood that the ARB concept may be revived during the next negotiating period? If not then, is there a chance that it may eventually be reestablished?

26. Would you suggest that other industries consider an appellate review system for arbitration decisions?

APPENDIX D

Summary of Interview Questions Related to Research Questions

	Research Questions							
Interview Questions	RQ 1	RQ 2	RQ 3	RQ 4	RQ 5	RQ 6	RQ 7	RQ 8
1	x							
2	x							
3	x							
4		x						
5		x						
6		x						
7			x					
8			x					
9			x					
10			x					
11				x				
12				x				
13				x				
14					x			
15					x			
16					x			
17						x		
18						x		
19						x		
20							x	
21							x	
22							x	
23							x	
24							x	
25								x
26								x

APPENDIX E

Consultants in Development of Research Questions

Vice-President of Labor Relations, BCOA

Regional Manager of Industrial Relations, Consolidation Coal Co.

President, Coal Labor, Inc.

APPENDIX F

Review Panel of Labor Relations Experts

President, Coal Labor, Inc.

Manager of Industrial Relations, LTV Coal

Regional Manager of Industrial Relations, Concolidation Coal Co.

Labor Consultant, Coal Labor, Inc.

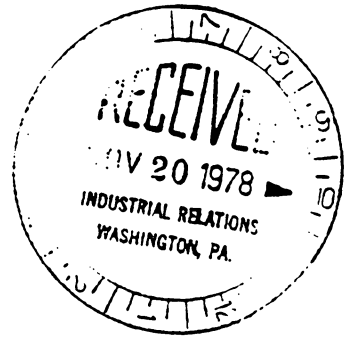
APPENDIX G

ADMINISTRATIVE AND PROCEDURAL RULES OF THE ARBITRATION REVIEW BOARD

BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

WASHINGTON, D. C. 20006

November 16, 1978



M E M O R A N D U M No. M-449

TO: BCOA Membership

FROM: , President

SUBJECT: Administrative and Procedural Rules of the Arbitration Review Board

Attached are the Administrative and Procedural Rules Governing Petitions for Review and Reviews of Panel Arbitration Decisions before the Arbitration Review Board and a memorandum from the Chief Umpire, , concerning them.

Please note the effective date of these rules is November 22, 1978.

Employers who have already filed appeals will be contacted by Vice President, Labor Relations, concerning resubmission to the Arbitration Review Board.

Questions concerning these rules should be directed to Tom Waddington.

Enclosures - 2

cc:

ARBITRATION REVIEW BOARD

UNITED MINE WORKERS OF AMERICA

AND

BITUMINOUS COAL OPERATORS' ASSOCIATION

CHIEF UMPIRE

November 21, 1978

M E M O R A N D U M

TO: Parties Signatory to the National Bituminous Coal Wage Agreement of 1978

District Arbitrators

SUBJECT: ADMINISTRATIVE AND PROCEDURAL RULES GOVERNING PETITIONS FOR REVIEW AND REVIEWS OF PANEL ARBITRATOR DECISIONS BEFORE THE ARBITRATION REVIEW BOARD

Enclosed is a copy of the Administrative and Procedural Rules promulgated by the parties to the National Bituminous Coal Wage Agreement of 1978. These rules will govern review proceedings in review of District Arbitrator awards made in cases arbitrated under the 1978 Agreement. They have been promulgated in accordance with paragraph 7 of the Memorandum of Understanding Continuance of Arbitration Review Board, made a part of the National Agreement and reported at pages 161-163 of the contract book.

Attention is called specifically to the following:

1. Effective Date.

In order to facilitate notice and communication of these Rules, the parties have agreed that the effective date of these Rules shall be Wednesday, November 22, 1978. All periods of time stipulated in the Rules to run from the effective date of the Rules shall commence on that date.

2. Petitions for Review Filed and Cases Arbitrated Under the 1978 Agreement Prior to Effective Date of Rules.

Attention is directed to the last paragraph and provision of the Rules, under the title, "Cases Arbitrated under the National Bituminous Coal Wage Agreement of 1978 Prior to Implementation of Arbitration Review Board Administrative and Procedural Rules". Petitions for review previously and presently filed with the Board are to be refiled under, and in compliance with, the provisions of the Rules. Also, cases decided under the 1978 Agreement for which no petition for review has yet been filed may be filed with the Board under, and in compliance with, the provisions of the Rules. For both types of cases, the periods of time stipulated for any filings in review proceedings shall commence with the effective date of the Rules and shall run in accordance with the provisions of the Rules as applicable to such filings.

3. Interpretative Instructions by the Board.

Various provisions of the Rules direct the Board to issue instructions on various matters. Please be advised that such instructions are in preparation and will be issued from time to time. However, initially, and for those filings which may even now be in preparation, it should be noted that all papers, to the extent practicable considering some exhibits, should be prepared on 8-1/2 by 11 stock and should have sufficient margin on the left and at the top for convenient binding in files at either the side or the top.

4. Questions and Information.

If there are questions or there is need for information, please do not hesitate to call the Board at
We are informed that the Department of Contract Administration of the U.M.W.A., at
; and the Labor Relations Department of B.C.O.A., at are also preparing to aid inquirers with advice and counsel for the preparation of various filings as may be necessary under these Rules.

ARBITRATION REVIEW BOARD, UMWA-BCOA

BY _____

Chief Umpire

ADMINISTRATIVE AND PROCEDURAL RULES GOVERNING PETITIONS FOR REVIEW AND REVIEWS OF PANEL ARBITRATOR DECISIONS BEFORE THE ARBITRATION REVIEW BOARD

Introduction

In accordance with Paragraph No. 7 of the Memorandum of Understanding, Continuance of Arbitration Review Board, appearing in the National Bituminous Coal Wage Agreement of 1978, the following administrative and procedural rules have been established by the parties. These rules have been prepared in consultation with the Chief Umpire and will govern the Arbitration Review Board's method of handling Petitions for Review and Reviews of Panel Arbitrator Decisions before the Board.

Implementation of Panel Arbitrator Decisions

1. General Rule

   For the term of the National Bituminous Coal Wage Agreement of 1978, a panel arbitrator's decision shall be implemented as soon as reasonably practicable following the date of its issuance, subject to the exceptions provided in Paragraphs 2(a) and (b) below. However, the fact of implementation pursuant to this provision shall not be considered by the Board in its decision on the merits of the review by the Board.

2. Exceptions to the General Rule

   In the event a panel arbitrator's decision falls into one of the following categories, and the Employer to the arbitration petitions for a review before the Arbitration Review Board the following rules and procedures shall apply:

   (a) Decisions Involving Payment of a Monetary Remedy

   If implementation of a panel arbitrator's decision would require the payment of monies to Employees, the

Employer shall have the option to either: (i) withhold payment until receipt of the Board's decision, but guarantee that monies will be available; or (ii) commence payment of the monies in accordance with the general rule stated in Paragraph 1 hereof and recoup such monies at the time of receipt of the Board's decision if the Board reverses the panel arbitrator's decision.

(b) Conditions Covering a Stay of Implementation

If implementation of a panel arbitrator's decision would probably result in damage to the Employer such as described below during the interim period pending final resolution of the Employer's petition for review by the Board, the Employer may petition the Board for an order staying implementation of the arbitrator's decision for such period. In such event, however, the Employer must file with the Board by letter postmarked within 15 days of the date of the panel arbitrator's decision, both his petition for review pursuant to the Memorandum of Understanding, Continuance of Arbitration Review Board of the National Bituminous Coal Wage Agreement of 1978, and his petition for a stay of implementation. A copy of each shall be forwarded simultaneously to the appropriate UMWA District office.

The Board shall decide a petition for a stay of implementation within five days of its receipt by the Board. Where possible, the Board shall make its decision on the basis of the petition for a stay and the underlying arbitrator's decision alone. However, the Board within its discretion may schedule a hearing on the matter or request the submission of additional written statements.

(c) Grounds for Granting Stay of Implementation

For purposes of subparagraph 2(b), a decision which would be subject to a stay means a decision which would involve the building

of a new facility, a substantial curtailing of operations, the making of a substantial change in the method of operation, undertaking mine-wide reassignment of employees under the seniority provisions of the contract, or a decision that involves a serious risk of physical damage to an operator's property or equipment, or other similar actions which would probably inflict serious economic harm to the Employer at the operation involved.

3. No Waiver of Positions or Rights

Neither party, by entering into this document, waives any of its positions or rights regarding the question of whether a panel arbitrator's decision petitioned for review by the Board must be implemented prior to review and decision by the Board, but agrees to follow the provisions of this document.

Duties of the Arbitration Review Board

The Arbitration Review Board shall have responsibility for the collection, retention and distribution of all documents pertaining to Petitions for Review and Reviews before the Board. Further, the Board shall be responsible for those administrative duties as prescribed within the Employment Agreement of the Chief Umpire.

In addition to the above the Board shall:

1. Be responsible for the collection and maintenance of a list of panel arbitrators in use between the UMWA Districts and signatory employers.

2. The Board shall instruct panel arbitrators to submit copies of their decisions to the Board and further the Board shall instruct the panel arbitrators that their decisions shall contain the contractual basis for the decision, or the basis on which the decision was made.

3. The Board shall instruct panel arbitrators as to their duty to be responsible for and maintenance of the record of cases heard by the panel arbitrators.

4. The Board shall provide an outline to panel arbitrators which will set forth those elements which shall be included within the record:

   (a) All testimony admitted in the record, including any rulings on objections or exceptions will be recorded by the arbitrator and will be transcribed upon request by the Board.

   (b) All supporting exhibits submitted during the arbitration process;

   (c) All citations of arbitrations or Board decisions;

   (d) All stipulations of fact or contract citations;

   (e) All other matters of record upon which the panel arbitrator based his opinion;

   (f) Certification by the panel arbitrator that items (a) through (e) above are a true and accurate record of the proceedings before him.

5. In those instances where the Board has determined that a full record of a case before the Board is necessary to reach a decision in the case, the Chief Umpire shall request a complete record as outlined in paragraph 4 above from the panel arbitrator. The preparation cost of the record shall be submitted to the Board and the Board shall charge the petitioning party for the cost of the record.

6. The Board shall maintain a log of all documents submitted in a petition for review and those accepted for review before the Board. Said log shall contain the petition number and the dates the supporting and respondent materials are received. The log will also indicate the disposition of the case at all steps of the process. The parties shall have access to the log.

7. The Board shall make distribution of all documents submitted for its consideration in Petitions for Review and Reviews before the Board. Said distribution shall be sent to the parties to the arbitration, the UMWA and BCOA.

8. The Board shall notify the UMWA, BCOA and signatory companies of the ground rules which have been established governing Petitions for Review and Reviews before the Board.

Petitions for Review and Reviews Before the Arbitration Review Board

General

It is the intention of the parties to provide an expeditious mechanism for the handling of Petitions for Review and Reviews before the Arbitration Review Board. In this regard, the parties express a mutual commitment to comply with the time limits established within the following procedures and recognize that only the Chief Umpire may grant an extention of time limits in extreme circumstances. The time limits expressed herein shall begin and end upon receipt of the documents at the offices of the Arbitration Review Board, located in Washington, D. C. In the case of panel arbitrator decisions, the time limit shall begin on the date the panel arbitrator signs the award. Calculation of the period of any time limit expressed in these rules shall be made by disregarding the day on which the period begins, and, starting with the first calendar day following, counting the stipulated number of calendar days of the period, with the period terminating on the last such calendar day, at the close of business on that day. However, if the last of the stipulated days shall fall on Saturday, Sunday or a Contract Holiday, then the last day of the period shall be the next following business day and the period shall terminate at the close of business on that day.

Petitions for Review by the Arbitration Review Board

1. Petitions for Review of panel arbitrator decisions must be received by the Board within 35 days from the date the panel arbitrator's decision was signed. The Petition for Review shall include a full and complete statement of the grounds for review. Supporting arbitration awards and awards of the Board may also be submitted. The Board shall only hear cases involving the following provisions of the National Bituminous Coal Wage Agreement of 1978.

(i) Decisions of a district arbitrator in conflict with one or more decisions of other arbitrators on the same issue of contract interpretation or in conflict with a previous decision of the Arbitration Review Board; or

(ii) Decisions involving a question of contract interpretation which has not previously been decided by the Board and which in the opinion of the Board involves the interpretation of a substantial contractual issue.

2. Upon receipt of a Petition for Review, the Board shall immediately log said petition and forward copies of the Petition for Review, together with supporting documents, to the other party to the arbitration, the UMWA and BCOA.

3. Within 30 days following receipt of a Petition for Review by the Board, the respondent to the petition may file with the Board a statement citing reasons why a review of the case should not be granted by the Board. Copies of the respondent's statement shall be forwarded to the petitioning party, UMWA and BCOA.

4. Within 10 days following the 30-day period allowed the respondent for filing a statement, the Board shall render its decision as to whether to review the case.

5. Within the 30-day period allowed the respondent to file a statement, the President of the BCOA shall have the authority to withdraw Employer petitions for review from consideration by the Board. The President of the UMWA shall also have the authority to withdraw district petitions for review from consideration by the Board. If either the UMWA or BCOA withdraws a petition for review, the parties to the arbitration together with either UMWA or BCOA, shall be notified by the Board. Withdrawal shall not constitute a precedent in the handling of other cases.

6. If no withdrawal of the petition for review has taken place, the Board shall notify the parties to the arbitration, UMWA and BCOA of its decision regarding the petition for review.

7. In cases where the Board has granted a review of a panel arbitrator's decision and the Chief Umpire determines that a complete record of the case is necessary in his consideration of the review, the Board shall order a record of the case from the Panel arbitrator. The cost of the record shall be paid by the petitioning party.

Review Before the Board

1. Following a decision of the Board to review a panel arbitrator's decision, the petitioning party shall have 30 days to submit a brief and supporting documents in the case before the Board. In cases where a transcript was ordered by the Chief Umpire the 30-day period will begin on the date the record is sent by the Board to the parties to the arbitration, UMWA and BCOA. If no record is requested, the 30 days shall begin on the date the decision was made to grant the review. Copies of the petitioner's brief and supporting documents shall be sent to the respondent, the UMWA and BCOA by the Board.

2. Following the 30-day period wherein the petitioner has filed a brief and supporting documents with the Board, the respondent shall have 30 days to submit a response to the Board. Said response shall be sent to the petitioner, UMWA and BCOA by the Board.

3. Within 15 days from receipt of respondent's brief by the Board, the UMWA and BCOA may exercise their right to intervene and to present oral and written arguments before the Arbitration Review Board. Copies of written arguments shall be sent to the parties of the arbitration and the UMWA or BCOA. In the case of request to make oral arguments before the Board by either the UMWA or BCOA, the Board shall notify the other party and the parties to the arbitration of the request and schedule a hearing before the Board with the parties to the arbitration present.

4. Following the conclusion of the 15 days provided the UMWA and BCOA to intervene in the case, the Board shall render a decision in the case within 30 days. Said decision shall be signed and in writing and the Board shall transmit a copy of the decision to the parties to the arbitration, UMWA and BCOA.

5. In circumstances where the Chief Umpire determines that a hearing of the case before the Board is necessary before a decision can be rendered, the Chief Umpire may call for a hearing. The hearing shall be conducted within the 30-day period provided in Paragraph No. 4 above. The parties to the arbitration, UMWA and BCOA shall have the right to be present and participate at the hearing. The Board shall render its decision within 45 days following the intervention period provided in Paragraph No. 3 above.

Cases Arbitrated Under the National Bituminous Coal Wage Agreement of 1978 Prior to Implementation of Arbitration Review Board Administrative and Procedural Rules

Panel arbitrator decisions rendered under the terms of the NBCWA of 1978 which were issued prior to the establishment of these administrative and procedural rules may be considered for review. All petitions for review previously filed with the Board, as established under the terms of the 1978 NBCWA must be refiled to comply with the terms of this document. Petitions for Review and Petitions for Stay of Implementations on these cases must be filed with the Board within 35 days of the effective date of this document and are subject to the conditions set forth in this document.

President	President
United Mine Workers of America	Bituminous Coal Operators' Assn.

Date: 11/13/78

ADDENDUM

In order to facilitate notice and communication of the within Rules, the parties have agreed that the effective date of these rules shall be Wednesday, November 22, 1978. All periods of time within which filings are to be made under, and in compliance with, these rules, shall, to the extent applicable, commence with the effective date, November 22, 1978.

ARBITRATION REVIEW BOARD, UMWA-BCOA

by _____

Chief Umpire

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