CONSPIRACY IN COAL

by

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APPALACHIAN MOVEMENT PRESS
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Strip Mining

To most Americans, Consolidation Coal Company is hardly a household word, even though 78 miners lost their lives three months ago in the company's Mountaineer No. 9 mine in Mannington, West Virginia.

True, its name did appear in newspaper and television accounts of the explosion, along with the information that Consol (as the company is familiarly known to the industry) is one of the two largest coal companies in the world; that its No. 9 mine was removing 10,000 tons of coal a day; and that the company sold more than 52 million tons of coal in 1967, giving it roughly 10 per cent of the total U. S. market. But little else was heard about the company at the time.

By way of contrast, the United Mine Workers of America has retained its status as a household word since John L. Lewis made it one, though its currency had faded in the months and years prior to last November's disaster. The UMW's familiar name reappeared in newspapers around the country at the time of the disaster. Its president, W. A. (Tony) Boyle, visited Mannington soon after the mine explosion and was widely quoted in his praise of Consol as a "cooperative" and safety-minded company. "I know what it's like to be in an explosion," Boyle said philosophically. "I've gone through several of them." There is always, he said, "this inherent danger connected with mining coal," and he emphasized that Consol is "one of the better companies to work with."

A day or two later the U. S. Bureau of Mines admitted that its inspectors had found this same exemplary company in violation of federal rock-dusting regulations in all two dozen inspections of the No. 9 mine since 1963 and had cited the mine for 25 other safety violations since December, 1966. No. 9 had already weathered an explosion that took 16 lives in 1954--a few months after Consol bought the mine from another company--and it was widely recognized as an unusually dangerous mine because of the high concentration of volatile methane gas in its coal seams. Yet no action had ever been taken by Bureau of Mines inspectors to enforce regulations or to close the mine. "Close a Consol mine? You must be kidding," one Bureau official said recently when asked why the government had been so tolerant. "Any inspector who closed a Consol mine would be looking for another hob the next day."

Competent mining engineers have privately criticized the design of the Consol mine for reasons much more basic than questions of adequate rock-dusting and other "housekeeping" details. The mine is located in the same gassy seam of coal in which the worst mining disaster in American history took place - - 10 miles away at Monongah, West Virginia, where 361 men were killed in 1907 - - and has operated under conditions similar to those at a mine in West Frankfort, Illinois, which blew up in 1951 and killed 119 men. "When you go in with a mine like No. 9, you know in advance that you're in potential trouble," one engineer explained not long ago - - off-the-record, because he has had connections with Consol. "The company could have taken any one of three steps to minimize the possibility of an explosion. It could have mined coal in well-separated blocks so that build-ups of gas in one area wouldn't penetrate to another; it could have drilled gas-ventilation bore holes from the ground above down to the mine; or it could have mined coal only when conditions were safe, when gas was at acceptable levels."

Mining conditions, the engineer explained, are at their most dangerous during weather changes, when low barometric pressures allow gas to escape from coal seams in greater quantities than normal. The Monongah, West Frankfort, and Mountaineer No. 9 disasters all took place, he said, during or immediately after snowfalls, when the barometer had fallen abruptly. "To the extent that you can predict any disaster," he said, "you could have predicted this one." Why hadn't Consol taken any of the three basic precautions? "They would all have cost the company money," he said simply.

None of this was reported from the scene of the disaster, yet it must have been common knowledge among mining engineers -- and presumably among the top officials of the UMW, who consider themselves well informed on safety. But there was no protest from the union -- nothing, in fact, except praise for Consol. Why?

What no newspaper or television account of the disaster had mentioned was that only three weeks earlier a federal jury in Lexington, Kentucky, had rendered a verdict against Consolidation Coal Company and the United Mine Workers of America for conspiring since 1950 to create a monopoly of the soft-coal industry, in direct violation of the Sherman Antitrust Act.

This virtually unreported case, formally known as South-East Coal Company vs. United Mine Workers of America and Consolidation Coal Company, marked the first time that a jury has ever found the highest levels of big labor and big business guilty of a conspiracy to dominate a major American industry. Despite the trial's economic and historic significance, the jury's findings received negligible and incomplete mention: a brief account in The Wall Street Journal, a few paragraphs on the Associated Press wire, a single story in the Louisville Courier-Journal.

After hearing a month of testimony in the United States District Court, the jury concluded that such a conspiracy had existed since 1950 and that the plaintiff, a marginal operator in Eastern Kentuchy called South-East Coal Company, had been victimized by the Consol-UMW conspiracy and was entitled to collect $7,300,000 in compensatory damages - - half from Consol, half from the union.

For people who have tried to solve the puzzle of union-industry cordiality, the trial provided some key peices - - pieces that help tie together an array of activities on the part of labor, management, and government that had been fragmentary and baffling before.

The camaraderie reflected in testimony at the trial, and in Boyle's statements at Mannington, have not always been characteristic of union-management relationships in the coal industry, as anyone over 40 is no doubt aware.

For a period of 60 years after the United Mine Workers of America came into being in 1890, and particularly after John L. Lewis became president of the union in 1920, the coal business was a sage of hostility between labor and management, with almost a dozen years of uninterrupted warfare in the period immediately before 1950. But with the signing of the National Bituminous Coal Wage Agreement of 1950, all that changed - - abruptly, permanently, and somewhat mysteriously. Reminiscing later about the 1950 contract negotiations, George Love - - then president of Consol and now chairman of its board of directors - - would observe happily that "we haven't had any major strikes or labor trouble in coal" since then. And John L. Lewis would say that "George Love is an industrial statesman. Our nation would fare well had we more of his breed."

Harry Moses, who was head of U.S. Steel's mining division during the stormiest years on union-management warfare, would say of the UMW after 1950 that "they have joined us without reservation in all our dfforts to combat the influences of competitive fuels, government interference, and unreasonable safety regulations."

By 1959, moreover, Lewis and Love were getting together to form the National Coal Policy Conference, an unprecedented lobbying operation in which coal operators and union leaders, like lions and lambs lying down together, joined forces to assault the halls of Congress. A year later, when Lewis retired, labor writer Paul Jacobs noted that "he was heaped with lavish praise by the mine owners.

But this was the very same John L. Lewis who had vilified amnagement for 30 years in some of the most splendidly rococo oratory ever heard in America; who had condemned two Democratic Presidents without mercy; who had once ironically compared George Love to Samson by saying that Love was "so successful in putting his shoulders to the columns and supports of the temple (of industry) that he pulled it down about his ears." This was the same Lewis who, just a few months before an apparently permanent peace came to the industry, described the corporations which Love represented as "a tremendous group of immense power who have apparently decided to make this struggle...final and significant in American economic history." The turn-about after 1950, seen with the benefit of hindsight, was startling and complete. That it didn't simply happen by accident was the verdict of the jury in the South-East Coal Company trial late last year. The jury saw the signing of the 1950 wage agreement as the beginning of an intricate collaboration between labor and management.

II. WHICH SIDE ARE YOU ON ?

John Rowntree, the soft-spoken Tennessee lawyer who represented the plaintiff, South-East Coal Company, told the jury that evidence of conspiracy would not be found in letters or documents stating that we-the-undersigned-hereby-agree-to-conspirs. Economic conspiracies, he observed, are not made that way. Look particularly," Rowntree said, "at the effects of the course of conduct" followed by the men who signed the 1950 coal labor contract. There is no way to judge those effects without going back briefly to the years of warfare between management and the United Mine Workers, which began in the 1920's, when Lewis put together the first concerted organizing drive in the industry and the operators fought back with every weapon in their arsenal.

Their arsenal was no figure of speech. Nowhere were the labor battles bloodier than in Eastern Kentucky during the Depression. In Harlan County, where U. S. Steel, International Harvester, and other industrial giants had staked out enormous claims, the coal operators' association budgeted most of its funds for warfare. "Which side are you on?" the union organizers demanded. You could choose either side and run about an equal risk of getting killed. "You'll either be a union man or a thug for J. H. Blair," the miners sang, thereby immortalizing the county sheriff who, like his deputies and friends, was also a coal operator. Pitched gun battles were fought regularly in the streets of company towns. One was even fought in a company bathhouse, where thugs ambushed naked miners in the showers and shot them down in cold blood and hot water.

Coal operators gave ground to the union with the utmost reluctance. The years during and immediately after World War II were unbelievably chaotic. Three times during the war national strikes resulted in government seizure of the mines. The end of hostilities with the Germans and the Japanese did not end hostilities between the miners and the coal operators. With the War Labor Disputes Act still in effect, President Truman seized the mines again in May, 1946, during a particularly paralyzing national strike, and the government controlled coal production for more than a year.

In March, 1947, while the mines were still under federal control, a mine explosion at Centralia, Illinois, killed 111 men in the worst disaster since Monongah. Lewis declared a week of mourning, and mines shut down all over the country. At almost the same time, Congress rammed through the Taft-Hartley Act over Mr. Truman's veto while coal labor-contract negotiations were under way. Lewis, calling Taft-Hartley "the first ugly, savage thrust of fascism in America," sent 200,000 miners out on strike the day it became law. A week later he suddenly declared a national vacation period. During the summer of 1947 a new contract was finally signed; but in March, 1948, Lewis claimed that the operators were "dishonoring" it, and the miners struck again. The Justice Department used the new Taft-Hartley law to get a restraining order against the union; Lewis ignored it and found himself convicted of contempt. Not until the Supreme Court upheld the conviction several weeks later did the miners go back to work.

In June, 1949, they were out on strike again. Lewis said it wasn't really a strike this time; he called it "a stabilizing period of inaction" that was prompted by overproduction. It lasted a week. When it ended, Lewis ordered a three-day work week. The miners struck again in September, went back to work in November, struck once more in December, experimented briefly again with a three-day week, then struck - - and stayed struck as 1949 ended.

Someone suggested to President Truman that the problem could be resolved by making Lewis ambassador to Moscow, but Mr. Truman saw little humor in the idea; Lewis, he said, wouldn't even make a good dog-catcher. The President was no oratorical match for Lewis, who described Truman as "totally unfitted for the position. His principles are elastic, and he is careless with the truth. He has no special knowledge of any subject, and he is a malignant, scheming individual who is dangerous not only to the United Mine Workers but also to the United States." As for the coal operators, they were, said Lewis, dimply "human leeches" making fat profits from men who worked and died in unsafe mines.

The cheerless three-way impasse between union, operators, and government - - all of it precipitated by the refusal of anyone to negotiate seriously with anyone else for a generally acceptable contract - - might have gone on indefinitely if Truman had not created an emergency board of inquiry which found, in mid-February, 1950, that the country was down to a two-week supply of coal. Several states promptly declared emergencies, and the railroads, which had already sliced service in half, threatened additional cutbacks. Public opinion aligned itself against the miners, and editorials belabored Lewis with remarkable fervor. On

March 3, Truman went to Congress to ask for authorization to sieze the mines. Congress was more than ready to accommodate him. Neither the operators nor the union wanted the industry saddled with a law that would have made Taft-Hartley look libertarian by comparison; if there was one thing they could agree on, it was their determination not to let the federal government dictate to the industry. Both union and management suddenly found it possible to sit down on a Sunday afternoon and negotiate a contract with each other. On Monday morning, March 6, 1950, the last great coal strike ever engineered by John L. Lewis came to an end.

III. THE ELEPHANT AND THE MOUSE

The National Bituminous Coal Wage Agreement of 1950 was significant not only because it marked the end of large-scale labor warfare in the coal industry but also because it was the first industry-wide contract in the history of the coal business. One of the principal questions argued in South-East vs. UMWA and Consol was whether there was more than a coincidental connection between these two facts.

Until 1950 the UMW had been in the habit of negotiating contracts separately with three different groups of coal operators: the Northern Coal Operators Association, which represented companies mining principally in Pennsylvania, northern West Virginia, Ohio, Illinois, and western Kentucky; the Southern Coal Producers Association, representing companies in southern West Virginia, Virginia, Eastern Kentucky, Tennessee, and Alabama; and the so-called "captive" mines, which were owned outright by steel-producing companies and did not sell coal commercially (except at times when steel required less than their total production).

Contract negotiations were invariably long drawn-out affairs featuring heavily publicized theatrical performances by both sides. Originally the UMW spokesmen had enjoyed the public spectacle hugely; even if most of the newspapers in the country took sides with the operators, the publicity did wonders for organizing efforts among the rank and file and created a solidarity within the union that might never have been possible otherwise. Over the years, however, Lewis and his two principal UMW lieutenants, vice-president Thomas Kennedy and secretary-treasurer John Owens, found themselves arguing more and enjoying it less. Owens, who went to work in the mines when he was 10 years old and is still handling the union's finances at the age of 78, admits to having felt considerable awe when he faced the coal operators: "It was rather embarrassing sometimes to Lewis and Tom Kennedy and myself," he once said, "not being able to cope with the intelligence and leadership that the coal industry provided when they met us." Lewis would never have admitted that, but Owens wasn't Lewis; there was only one Lewis.

The Northern operators produced more coal than the other two groups, and their negotiations with the union were invariably the noisiest and the most heavily reported - - partly because Lewis himself represented the union (Kennedy was generally assigned to bargain with the captive mines, Owens with the Southern operators) and partly because the Northern operators were represented for nearly 20 years by Charles O'Neill, a blusteringly intractable man almost as fond as Lewis of melodramatic speech-making. Whenever the two men met, the resulting furor resembled a supremacy battle between bull walruses in mating season. Negotiations between O'Neill and Lewis were generally attended by scores of reporters who reacted much like fight fans at Madison Square Garden, scribbling happily while Lewis elaborately castigated the coal operators for endless perfidies and O'Neill predicted economic disaster for the entire world if American coal companies were forced to pay their miners a penny more. O'Neill backed himself up with a portable squad of statisticians who attended the negotiations with him and supplied impressive data to support his claims. "Ringling Brothers," one reporter remembers fondly now, "had nothing on Charlie O'Neill."

But by 1950 Charlie O'Neill was dead and the Northern operators were represented by George Love of Consolidation Coal Company. Negotiating was something new for him; he claims now that he didn't enjoy it. After all, Love said, Lewis "was an old hand at negotiating and it was something new for me...that was sort of like matching an elephant and a mouse."

George Love's self-description is appealing, but wide of the mark. By 1950 George Love was the largest mouse in the coal business. He knew his way around. He had been a coal operator since 1926 - - after Princeton, the Harvard Business School, and two years as a stockbroker - - and had moved into the Consolidation Coal Company in 1943. Consol was a shaky giant then, not yet fully recovered from bankruptcy during the Depression. Love proceeded to take control of Consol by merging it with his old company, Union Collieries, and acquiring the majority of the new corporation's stock - - a project in which he had the powerful financial help of George Humphrey, then president of the M. A. Hanna Company and later to become President Eisenhower's Secretary of the Treasury and principal guru for domestic affairs.

Once Love and Humphrey had taken control of Consol, they merged it with Pittsburgh Coal Company, and in 1945 Love became president, at the age of 44, of the largest coal company in the United States (Humphrey chose to stay in the background, merely holding 25 per cent - - the largest single block - - of Consol's stock). If the 1950 negotiations pitted an elephant against a mouse, it was a battered 70-year-old elephant going into combat against an aggressive mouse 21 years younger.

Love remembers the negotiations as a "long, bitter struggle." The presence of so many reporters "forced both... the union and the operators to take a public position," and he was opposed to that. He was not accustomed to involving the public in his work. He was also profoundly opposed to government intervention in the coal industry, and when Mr. Truman finally went to Congress to ask for enabling legislation to seize the mines, Love caved in immediately and signed with Lewis. The Southern operators and the captive mines followed suit the same day.

The signing of the contract under such unfavorable circumstances left Love determined not to repeat the experience. The 1950 agreement went into effect in March; by July, after a number of private meetings with Harry Moses of U. S. Steel, Love succeeded, without any publicity at all, in engineering an alliance between the Northern operators and the captive mines. A new organization, the Bituminous Coal Operators Association, came into being for the purpose of representing both groups in future negotiations with the United Mine Workers. Love chaired the first meeting of the new BCOA and arranged the election of Moses as its president.

There was nothing innocuous about the BCOA. Its members outproduced the Southern operators more than two to one. They mined approximately half of all the coal in the United States. This gave them far more than domination of the industry, since much of the remaining production came from small mines, many of which belonged to no association and were too busy struggling for survival to participate in national contract negotiations.

Just as George Humphrey had stayed behind the scenes during George Love's campaign to make Consol the biggest company in the industry, so now did Love stay behing the scenes in the development of the BCOA. As usual, he is beguilingly modest about his role in the organization. In the course of the conspiracy trial, John Rowntree asked him whether he had what might be described as a special relationship with the BCOA. "None," he said firmly. "Somebody from Consol was a director, along with 23 or 24 others, but we had no particular arrangement with anybody. We were one member out of a great number."

Humility is George Love's long suit. However, BCOA's bylaws clearly provided that voting was to be carried out in accordance with the tonnage produced by each member - - one vote per million tons. Consol accounted for 15.5 million tons, but Love also served as representative of other companies with 37.5 million tons. The total tonnage of the BCOA's members was 110.5 million; at each BCOA meeting, therefore, Love controlled 52 votes out of 110. If by some exceedingly remote chance that had not been enough to give him control of the organization, he had only to join forces with his friend Harry Moses, who represented the 19.2 million tons produced by U.S. Steel and therefore had 19 votes. By no possible combination could the other members of the BCOA defeat Love's aggregate 71 votes with their 39; voting was by a simple majority, not by two-thirds. "Very democratic organization," Rowntree's co-counsel, Gibson Downing, remarked drily at one point during the trial - - a private joke that amused the 12 jurors.

IV. ABOUT FACE: THE CONVERSION OF JOHN L. LEWIS

The public and the press were not aware in 1950 of the means by which a single company had come to hold a commanding position in one of the nation's largest industries. John L. Lewis must have been very much aware of it, and he may also have been impressed by the speed and sophistication with which George Love had engineered such a coup. At any rate Lewis wasted no time in dealing with the new Bituminous Coal Operators Association. Less than six months after the formation of the BCOA, Lewis approached Harry Moses about renegotiating the 1950 contract - - although it still had nearly a year to run.

Moses was ready and willing to meet with Lewis. They conferred in complete secrecy - - the first time since 1890 that labor negotiations in the coal industry had been closed to the press, public, and the union membership. Moses agreed wholeheartedly with George Love's views on doing things in private; the public negotiations of the past had resulted, he thought, in "too much government, too little private initiative." Government involvement was a bad thing because it led to the settlement of problems "on a political basis" - - a fairly shrewd way of avoiding the more obvious truism that Republican businessmen did not want Democratic Presidents looking over their shoulders. Moses was in favor of removing the collective bargaining process "out from under the klieg light into the realm of fact and reason, "i.e. secrecy. Lewis went along with him. Reporters could get nothing out of either one of them during the negotiations, except that there was no hint of a strike. The agreement, when they reached it, was immediately ratified by the BCOA and by the membership of the UMW. Lewis came out of the negotiations sounding like a new man. "The country," he said, "is now freed from any thought of a so-called coal crisis for an indefinite period of time."

No one except John L. Lewis could have known how accurate a prophecy that would turn out to be. No one except Lewis can fully explain today the reasons for his dramatically abrupt change of heart in 1950. But Lewis is 89, enfeebled, and long since retired.

There is no denying, however, that the change was dramatic. The threat of a paralyzing national strike had always been Lewis's principal weapon against the coal operators and he had always held it over them like a Damoclean sword. He removed that sword in 1950 by stating publicly that there would be no further crises in the coal industry. It was not the kind of thing anyone expected, and it was inconsistent with historical patterns.

The pattern in Lewis's case was particularly clear. Since 1920 he had been hammering away without variation on three principal themes: employment for the maximum possible number of men; pay at the highest possible levels; work in the best possible conditions. He was basically opposed to socialism, but he favored government regulation of the industry whenever it would advance his goals. The coal industry had a tendency to overproduce, resulting in unpredictable layoffs of large numbers of men and temporary closing of mines. Lewis wanted the government to help with the problem.

At the union's 1936 convention, for example, he called on President Roosevelt to set up "a system of proper federal regulation which will encompass a synchronized system of price-fixing and allocation of tonnage on a basis equitably fair to mine workers and operators alike." Two years later he was demanding "a parity in competitive conditions which will as nearly as practicable allow each of the operators in the sereral (union) districts an opportunity to secure their fair share of the markets, and, at the same time, provide as equitably as possible equal work opportunities for all the mine workers employed in various districts."

Ten years later, in 1948, he was battling the postwar overproduction that was creating new turmoil in the industry. "If the operators of this country can't give any leadership on the commercial side of this industry," he thundered, "the United Mine Workers can and will... if there are only three days' work in this industry, we will all have the three days' work." It was no idle threat; the three-day week that Lewis imposed in 1949 was his method of imposing a production control on the industry.

Production control, whether imposed by Lewis or by the government, was anathema to free-enterprise boosters like George Love. "We complained bitterly," he testified, "about trying to operate our mines one day, three days, any number of days that we didn't decide." Love thrived in the chaos of the coal industry. In a well-regulated industry untroubled by overproduction, he might never have built the colossus of Consol. Nor could he have so shrewdly maneuvered half the industry into an association that he controlled. Conditions in the coal industry were allowing him to build an unprecedented economic empire with unprecedented speed; by his own admission, he was not about to let Lewis or anyone else take that away from him.

Negotiating with Love and Harry Moses, Lewis found himself dealing with men who were the antithesis of Charlie O'Neill. They were men of enormous personal wealth, accustomed to making decisions and carrying out policies without fanfare - - articulate, persuasive, unblustering, sure of themselves. Their infrequent public statements about the coal industry stressed the inevitability of a future in which mining would be carried out by fewer and fewer companies - - giant companies, heavily mechanized, able to stave off competition from oil and gas.

Whatever the merits of such views (Love and Moses did not, of course, use the word "monopoly" to describe what they had in mind), they clearly had an effect on Lewis. By 1952 he sounded like Love's alter ego. The smaller coal operators, he said, "are just a drag on the industry. The constant tendency in this country is going to be for the concentration of production into fewer and fewer units...more of the obsolete units will fall by the board and go out of production." He was, in essence, giving his powerful blessing to the building of the economic empire that George Love had been working on since 1926.

There may have been other reasons for Lewis's whole-hearted conversion to the basic tenets of big business. He may well have been influenced by the pathological fear of communism sweeping through the country during the McCarthy years. He had been something of a red-baiter himself as early as the 1920's, when he went after the Wobblies, and unquestionably the communist threat later became an obsession with him. In 1966, when asked whether his policies after 1950 had tended to create monopolies and restrain trade, Lewis countered: "The Communist threat that looms on the horizon and occupies the daily attention of every citizen of this land - - what about it?" The free enterprise system was at stake, he said. When he was asked whether he considered competition the backbone of that system, his answer made clear how much the man had changed since the militant days of the 1930's and 40's. "You may have that viewpoint," Lewis said. "At the moment, I am a little cloudy how to fit it into the complex economy and the interdependence of our economic units upon each other." He would not discuss the subject further.

Lewis' attitudes after 1950 must also have been influenced by forces more directly threatening than communism. The spectacular labor warfare of 1948 and 1949 had been less than a triumph for the UMW. With every strike, coal markets declined. Oil and gas made major inroads - - nowhere more dramatically than on the railroads, which rapidly converted from coal-fired to diesel locomotives. The Damoclean sword of the great national strike began to lose its effectiveness. Lewis could not form alliances with labor bosses in the oil and gas industries because neither industry employs large numbers of men; a major coal mine cannot be operated with supervisory personnel during a strike, but a major oil refinery can.

The strikes of 1948 and 1949 had also undercut Lewis' prestige as a labor leader - - not necessarily with his own rank and file, but certainly in the eyes of the public and of other union leaders. Men who had once paid homage to Lewis as a larger-than-life champion of workers in the world's most dangerous industry now saw him as a threat to an economy deeply shaken by post-war problems. He had begun to lose allies at a time when he might reasonably have been expected to want to keep them; at 70, with three decades of a brilliant career behind him, he had earned a place as an elder statesman in American labor, and it must have been a bitter pill for him to find himself so widely condemned for his strikes and rumors of strikes.

Under these circumstances, the understated persuasiveness of George Love must have had a profound effect on Lewis; the 1950-1951 negotiations between Lewis and Harry Moses were marked by cordiality between the two men - - who now, between them, held the power to determine the labor policies of an entire industry. Lewis, of course, could negotiate without fear of contradiction from a union which had long since grown accustomed to accepting his every word; Moses could guarantee the compliance of the BCOA's membership, thanks to George Love's unpublicized voting system; the Southern operators, excluded from the negotiating sessions, had the choice of accepting the contracts worked out by Lewis and Moses or facing the certain prospect of strikes which could cripple them permanently, since the BCOA operators, working with the Lewis-Moses contracts, would not be struck.

Through this concentration of power a peace descended on the coal industry that was awesome to behold. Successive contracts were negotiated and signed, without publicity, in 1952, 1955, 1956, and 1958. There were no alterations in the arrangements except for the succession of Edward J. Fox, president of the Philadelphia and Reading Coal and Iron Company, to the job of BCOA negotiator after Harry Moses died. Lewis continued to do the negotiating on behalf of the union, and even his own men generally didn't know the terms of the new contracts until they were read aloud at the union conventions.

The men were not supposed to worry, however. "These things don't come by accident or coincidence," union vice-president Tom Kennedy reassured them at the 1956 convention. "They are all very carefully planned out. Our strategies and our policies are worked out in detail. And it is remarkable how these strategies and policies have worked...."

It is also remarkable, and especially so in retrospect, that the rank and file sat back in silence and took Kennedy's word without argument or challenge. By 1956 automation was creating great gaping holes in the UMW's membership figures, and yet there was hardly any objection to Lewis's assumption of negotiating powers that made it unnecessary for him to go to his membership at any time for approval. When Lewis retired in 1960, Paul Jacobs observed that none of the mine owners paying fulsome tribute to him mentioned his dictatorial control over the UMW. "There was good reason for the silence," Jacobs concluded, "for it was Lewis's autocratic domination of the union...that permitted the coal industry to automate without resistance from its workers. It was because Lewis was not responsive to his membership - - indeed, because he was protected from them - - that the price of coal to the consumer was kept down and the mine owners were enabled to make profits at the cost of permanent unemployment for many mine workers."

If Lewis was protected from his membership, he most definitely was not protected from the influence of strong-willed men like George Love and Harry Moses. His admirers would scoff at the thought that he needed protection from anybody. The fact is, however, that Lewis not only began to sound like George Love; he began also to act like him. Quietly, without publicity, without the knowledge of the union's membership, the UMW had begun in 1951 to step over the traditional line between labor and management. It became very heavily involved in the business side of coal mining. No UMW members knew it at the time and few know it now. But their organization had become a coal operator.

V. JOHN L. LEWIS, COAL OPERATOR

In the delayed-reaction slump that hit the coal industry after World War II - - a slump caused partly by the decreased peacetime needs of steel and other industries and partly by encroachments from oil and gas - - there was one bright spot in an otherwise bleak land-scape. Beginning in 1948, the Tennessee Valley Authority constructed a series of giant coal-fired power plants whose initial purpose was to provide electricity for the Atomic Energy Commission's projects at Oak Ridge; later, as the system of plants expanded, the market for their electricity broadened far beyond government use. Since the TVA plants burned vast amounts of coal, the agency was inclined to buy it under long-term contracts because it cost less that way. To the companies which succeeded in winning contracts from TVA, such an arrangement brought a measure of stability in an exceedingly unstable industry. Naturally, the major coal producers quickly began scrambling for TVA contracts.

Among the scramblers was the West Kentucky Coal Company, a substantial operation with mines in three states. West Kentucky had resisted the UMW's organizing drives for half a century, and by 1950 - - when the UMW, with much ballyhoo, attempted to counter criticism of its new friendship with BCOA by announcing a drive to "organize every mine in the nation" - - the company was something of an embarrassment to Lewis. At some point - - the details of time and circumstance are not yet entirely clear - - Lewis got together with Cyrus Eaton, the multimillionaire Cleveland industrialist and board chairman of the Chesapeake and Ohio Railroad. With UMW funds loaned to Eaton on Lewis's authority, Eaton began buying stock in West Kentucky in a strategy to take over the company. By 1952, Eaton was on West Kentucky's board of directors. The following year he became chairman of the board. His first official act as chairman was to sign a wage contract with the UMW.

By taking control of West Kentucky, the UMW was able to move into the huge new TVA market - - and huge it was; between 1951 and 1956, while the coal market as a whole remained fairly static, TVA increased its annual purchases from one million to 18 million tons and became the largest single consumer of coal in the world. Through a series of low bids, Eaton and the UMW eventually landed more than 16 per cent of the TVA business for West Kentucky Coal Company.

Years later, when word leaked out that the UMW had become involved in the business side of mining, John Owens contended that Lewis had decided to take over control of West Kentucky simply in order to organize the mines. This was generally accepted at the time, but it seems to warrant closer scrutiny. In the first place, organizing a company by buying its stock is a highly unorthodox technique for a labor union to employ - - a technique that had never been used before by the UMW and apparently was never attempted again. More importantly, however, the UMW's involvement with West Kentucky did not end when Cyrus Eaton signed a labor contract in 1953. On the contrary, in the following five years the UMW poured a total of $25 million into the company, all in the form of loans to Eaton, which kept the UMW's name out of West Kentucky's annual reports and financial statements. Moreover, the UMW continued to control West Kentucky - - through Eaton - - until 1963, when the union inexplicably cancelled its numerous loans at a loss of $8 million and sold its interests to the Island Creek Coal Company.

It may be futile to speculate about what might have happened if the TVA market had not been so tightly cornered by a handful of companies. Quite possibly the enormous requirements of TVA's power plants would have stabilized whole sections of the coal industry if contracts had been doled out to a large number of companies. What that might also have meant to employment is easy to imagine.

TVA is perhaps too big an agency, however, to concern itself with the social side effects of its purchasing arrangements. The Authority is more directly concerned with producing electric power at the lowest possible cost so that it can withstand the onslaughts of private utilities.

Lewis's decision to invest UMW funds in a coal company - - which he reached without consulting the union membership and pursued in collaboration with one of the nation's most powerful industrialists - - leads inexorably to the conclusion that the UMW went into the coal business with some of the same goals that motivated George Love and Consol. No one knew it at the time, but by launching a campaign to divide the vast TVA market among a handful of companies, Lewis committed the union to a de facto alliance with Love that would ultimately lead a jury to find both the union and the company in violation of an antitrust law written, ironically, the same year that the United Mine Workers came into being.

VI. THE PROTECTIVE CLAUSE - - - PROTECTING WHOM ?

In 1958, while Lewis was still experimenting with the management side of coal mining and Love was leading Consol to the highest profits in its history, the BCOA and the UMW sat down together once again to negotiate a contract. This time the secrecy surrounding the meetings was so total that few people outside the industry even knew they were taking place. Lewis represented the union and Fox the BCOA.

Aside from the normal wage increases, the agreement included a "Protective Wage Clause." This clause did three things: (a) it specifically prohibited the UMW from negotiating any contract with any individual company or group; (b) it progibited members of the BCOA from sub-contracting with non-union companies; and (c) it created a "Joint Industry Contract Committee" with powers to enforce the Protective Wage Clause.

The JICC was to be composed of six members - - three from the union, two from BCOA, one from the Southern operators - - and it was charged with obtaining certificates of compliance on the Protective Wage Clause provisions from every union mine operator. Operators who failed to sign, or who signed but were later found to be violating the sub-contracting provision, could expect their coal to be boycotted. Within six months the JICC had obtained compliance certificates from more than 2,000 coal operators and was taking action against another 1,344 who had either refused to sign or had not gotten around to it. Almost all of the non-signers were relatively small operators.

Let us now return to the federal trial and to South-East Coal Company's allegations that union and management had conspired to restrain trade.

John Rowntree, who had been content through most of the trial to produce masses of evidence and let the jurors draw their own conclusions, changed tactics when he discussed the 1958 contract. "This activity under the Protective Wage Clause," he said, speaking with great emphasis, "was the epitome of high-handedness in business and labor getting together - - key representatives of big business and big labor, sitting together in an office in Washington as a self-appointed tribunal to try the actions of... any coal operator who did not comply with the policies laid down." The jurors, mostly small businessmen and blue-collar workers, listened attentively.

"Look at this whole Protective Wage Clause," Rowntree said, "and see how firmly the UMW bound itself up in a strait jacket; and how ridiculous it would appear to be for South-East Coal Company to sit down here and expect to have good faith bargaining... with this kind of clause in the national contract."

South-East Coal Company, which at that time operated two mines in Eastern Kentucky, had not, of course, been bargaining separately with the UMW; like other members of the Southern Coal Producers Association, the company was handed each contract on a sign-it-or-take the consequences basis. The terms were whatever the union and the BCOA had agreed upon. South-East's president, Harry LaViers, had been a vocal opponent of the system of hand-me-down contracts ever since the first one had been signed in 1950; he favored regional contracts that would take into account peculiar regional problems. At the trial he claimed that he had in fact refused to sign the 1958 contract - - as an act of protest. The union claimed that he did sign. In any event, the contract was binding on him, as a member of the SCPA, and he met its terms. But there was little argument over one point: the 1958 contract prohibited the kind of individual or regional contracts that LaViers wanted - - at a time when the need for them distinctly appeared to be growing.

Throughout the 1950's Eastern Kentucky mining, largely carried on by a few major captive mines and a considerable number of relatively small commercial operators, had lagged behind the national average both in productivity and in profits. By the time the industry was hit by a general recession in 1958, the commercial operations in the area were already tending to polarize between a few efficiently mechanized companies like South-East and a growing number of small, fly-by-night, non-union companies, employing handfuls of men, mining poor seams of coal at marginal profits, ignoring safety regulations, and going out of business with awesome frequency - - sometimes reappearing under toher names, sometimes simply disappearing when the operators took what little they could keep and left for Florida. In the general area where South-East operates, a toatl of 33 rail mines were at work in 1949; 10 years later there were six. The rest of the mines, too small to warrant rail service at their portals, were served by trucks.

The 1958 recession hit Eastern Kentucky harder than it did the rest of the country, and lasted longer. Coal production dropped 18 per cent nationally between 1957 and 1961; the drop was 30 per cent in Eastern Kentucky. The result was runaway unemployment. With no other industries to turn to, Eastern Kentucky found itself in desperate economic straits. Even before the end of the Eisenhower Administration, federal agencies began to look with dismay at the mushrooming poverty in the coal towns scattered through the mountains.

For South-East Coal Company the general problems of the recession were complicated by some peculiarities of the company's own operation. South-East's two mines were nearing the end of their coal reserves, and the company's president, Harry LaViers, faced a major business decision whether to develop new mines at considerable expense in a declining market, or divide the company's profits among the stackholders and quit the business. After much agonizing, the company reinvested its money in the construction of a new mine and a modern cleaning-and-preparation plant. The expenses involved in both projects turned out to be much higher than the company had calculated, and by 1959 South-East was in serious financial trouble.

The company's sales continued to decline as the recession deepened. LaViers went to George Love to ask Consol to act as sales agent for South-East's coal; Consol had effectively monopolized South-East's principal markets by that time, and LaViers hoped to ease his problems by joining Love instead of competing with him. Consol signed on as sales agent, and the company's sales improved - - but not fast enough. South-East's expenses continued to run ahead of its income.

By the end of 1961 the company was on the edge of bankruptcy.

VII. NO DEAL

In January, 1962, Harry LaViers went to Washington to visit Thomas Kennedy, who had become president of the United Mine Workers after Lewis's retirement two years earlier. LaViers had decided that South-East could not remain in business unless he could find a way to cut production costs. As with most mines, South-East's highest production costs were for labor. LaViers went to Washington hoping to negotiate a new contract with the union - - a contract that would give him temporary relief.

Specifically he wanted to do something about the payments the company was making into the union's Welfare and Retirement Fund. Since 1946, coal labor contracts had included a tonnage royalty payment into the Fund, which had been established after negotiations between Lewis and the then Secretary of the Interior, J. A. Krug. The Fund was unique in American labor at that time, and there was no doubt of the need for it in an industry in which men had been getting killed, disabled, and injured at a rate that averaged out to 100 casualties a month for a century. The Fund was financed initially by a royalty of five cents on each ton of coal brought out of union mines. The royalty was raised to 20 cents per ton in 1948, 30 cents in 1950, and 40 cents in 1952.

Throughout the 1950's South-East had paid nearly $3 million into the Welfare and Retirement Fund - - an average of $281,331 per year. This worked out to nearly $1,000 per year for every union man on the company's payroll - - and regardless of the merits of the Welfare Fund, a payment of $1,000 per man per year into a medical insurance, disability, and retirement fund seemed especially high to Harry LaViers.

By the time LaViers went to call on Tom Kennedy, the Welfare and Retirement Fund had long since burgeoned into the most fantastically profitable of the UMW's operations. (Taft-Hartley regulations required that the Fund be a separate corporation, and accordingly it was and is identified as such. The Fund is under the direction of three trustees: one represents the operators, one the union, and one is supposedly neutral. The "neutral" trustee and director of the Fund since 1948 has been Miss Josephine Roche, whose close ties with the union go back to 1928, when she operated a Colorado coal company that was the first west of the Mississippi to sign a union contract. Later, as an Assistant Secretary of the Treasury, she supported Lewis's campaign for the Fund, and in 1945-46 she planned the details of the Fund with him.) In 1961, the Welfare Fund took in $224 million in royalties; after expenses, which came to $118 million, the Fund had a cash surplus of nearly $106 million - - most of it on deposit with the National Bank of Washington, which the union controls.

LaViers must have felt a little quixotic as he sat down with 74-year-old Tom Kennedy to discuss a new contract. Kennedy, a former Lieutenant Governor of Pennsylvania who had served as Lewis's faithful sidekick for 33 years, was not about to deal. "You know we have a national agreement," he allegedly told LaViers. "I can't modify that agreement." LaViers pointed out that in 1961, while South-East was losing $250,000, it was simultaneously paying $215,000 into the Welfare Fund. The Fund might have gotten by on a little less, he thought, in view of its $106 million surplus. Kennedy was not impressed. LaViers complained that South-East could not compete against the smaller Eastern Kentucky mines, many of which were not keeping up their royalty payments but were being left alone by the UMW. LaViers asked for a new contract which would grant relief from the welfare payments and would pay the company's union men for eight hours at the job site, rather than portal-to-portal. "If you can't do it for an indefinite period of time," he asked Kennedy, "do it temporarily." Kennedy wouldn't do it, period. "We have a national agreement, and I can't mosify it," he said, and that was that.

LaViers could not have known then that the union had been perfectly willing to help its own company, West Kentucky, when West Kentucky fell behind in royalty payments in 1959 and 1961. Specifically, the union had loaned the company almost $1 million to maintain royalty payments. The money came out of the union's National Bank of Washington, went through UMW headquarters, and on to West Kentucky Coal before making its way back to the National Bank of Washington in the form of Welfare Fund payments. The loan was never repaid. The national agreement to which Kennedy considered himself morally bound had not prevented his union from robbing Peter to pay Paul when circumstances called for it.

But LaViers did not know that, and he returned to Kentucky in a low state of mind. After long discussions with his son, Harry LaViers, Jr., who had become general manager of the company, he decided to take a gamble: break the contract with the union. He wrote a letter to each of his employees, advising them that as of March 1, 1962, South-East no longer would be a signatory to the national wage agreement, and asking them to continue work.

No sooner had South-East gone non-union than Consolidation Coal Company stopped selling South-East coal. LaViers testified at the trial that Consol officials told him, they would boycott his coal, under the Protective Wage Clause, if he broke the contract. George Love testified that that just wasn't so. He said LaViers had told him South-East could do better if it handled its own sales, "and I had no objection." He could hardly have believed that South-East would in fact be able to do better; South-East, with no sales organization of any kind at that time, would be in direct competition for the Great Lakes market with Consol, which had sales offices in Cincinnati, Pittsburgh, Cleveland, Chicago, and other cities - - a sales operation that would, in Love's typically modest words, "compare favorably with that of any other producer."

In 1960 Consol sold 270,000 tons of South-East coal; the following year Consol's sales on behalf of South-East were 133,000 tons. In the first part of 1962, when Consol knew South-East was preparing to go non-union, sales fell to 443 tons. After March 1, 1962, while South-East coped with a strike at its mines and struggled to set up its own sales force, Consol sold not a gram of LaViers coal.

VIII. THE VERDICT

Testimony in the trial of South-East Coal Company vs. United Mine Workers of America and Consolidation Coal Company lasted four weeks; the jury reached its verdict in four hours. "I thought things would turn out all right when the foreman came back and asked for an adding machine," Harry LaViers, Jr., said later. With the help of the machine, the jurors concluded that the company was entitled to collect more than $7 million in damages from the defendants.

But the ultimate outcome of the case is uncertain. A previous conspiracy suit against the United Mine Workers was remanded by the Supreme Court to a lower court, which ruled in favor of the union; the Supreme Court last month refused to re-hear the case. South-East vs. UMW and Consol is being appealed by both defendants and will be argued next in the Sixth U. S. Circuit Court of Appeals in Cincinnati - - but it will take at least 14 or 15 months because of the court's crowded calendar. Meanwhile, South-East Coal Company will be unable to collect a dime and vital questions of future action against this and other monopolies will remain unanswered.

The defendants, however, are likely to continue to prosper no matter what the outcome of the South-East case may be. The United Mine Workers, despite continuing problems of declining membership in a heavily automated industry (fewer than 128,000 members now, campared to about 350,000 in 1948) has net assets of more than $100 million, most of which comes not from membership dues but from investments - - principal among them the highly profitable National Bank of Washington and the C&O Railroad. Annual returns on its investments alone run into millions of dollars and increase steadily while membership declines. UMW President Boyle, a former assistant to Lewis who took over after Tom Kennedy's death in 1963, is highly irritable about people who criticize his organization. "These individuals," he has said, "are castigating and berating the greatest Welfare and Retirement Fund and the greatest union in America because the union didn't give them all jobs. We don't have that many jobs to go around."

True enough, as thousands of unemployed miners can testify. But Boyle's job is secure at a salary of $50,000 per year, and when he retires he will continue to get his full salary. The union's 27 district presidents are secure in their jobs, too, at up to $30,000; they will retire at half pay.

Rank-and-file members of the union, on the other hand, draw only $1,380 per year now from the Welfare and Retirement Fund when they retire - - if they can qualify. Twice in recent years the Fund has tightened its eligibility requirements. When a miner retires, he must be able to prove that his last job was in a union mine, and he is likely to be disqualified if he worked at any time in a supervisory job or for a non-union mine (the old UMW men who went back to work for South-East after the company's 1962 strike, for example, will never be eligible for retirement benefits even though some of them had been union men since the Depression). Applicants for pensions may request a hearing if they are turned down, but the Fund can refuse such requests and generally does.

The Fund has no financial problems and its trustees are well taken care of. The "neutral" trustee, Miss Josephine Roche, is drawing a salary of $60,000. She is 82. The industry trustee, Henry G. Schmidt, chairman of North American Coal Company, is 68. He receives $35,000 a year from the Fund in addition to the $75,000 salary he gets from his company. The union trustee continues to be John L. Lewis himself, who at 89 is too infirm to participate in deliberations of the Fund but is nevertheless paid $35,000 a year - - which, when added to his retirement pay of $50,000 a year from the union, provides a comfortable income indeed.

Miss Roche, like Mr. Boyle is sensitive to criticism. "We do not pass a week without saying, is there any possibility of this sort of thing or that sort of thing happening which may jeopardize some of our benefit payments," she told the union's convention last year. "We try to be on the alert constantly." No doubt. On the other hand, one can only wonder why the Fund keeps more than $67 million in a general checking account at the union's National Bank of Washington, where the money collects no interest. At current rates the interest might be as much as $3 million. While $3 million might be small potatoes compared to the Fund's current cash surplus of $180 million, it would cover more than 2,000 men per year at current pension levels; or, seen from another viewpoint, it would go far toward covering the Fund's $4 million annual staff payroll. In effect, the Fund is giving the National Bank a gift of $3 million - - which, of course, is a gift to the union, since the union controls the bank. Boyle and his lieutenants are not about to find themselves short of cash when they retire.

Despite these questionable uses and non-uses of Fund money, Miss Roche was quick to warn the union convention: "We cannot promise you definitely that any Fund benefit increases can be authorized in the near future. We can assure you, however, that your comments and viewpoints will be given the fullest consideration." This must have been most reassuring.

For his part, George Love has long since moved on to bigger things than the mining of coal. In 1961 he took over the Chrysler Corporation when it was on the decline, pouring Consol's money into it and attempting a merger with Mack Trucks, Inc.; the merger was blocked by the Justice Department, thwarting Love for perhaps the first and only time in his career. Through the 1960's, however, he guided Consol's absorption of a number of smaller companies and led the company to constantly higher annual profits - - from $12 million in 1954, for example, to more than $45 million in 1966. In 1967, he merged the company with Continental Oil Company, creating a colossal combine that deals in all the major sources of energy - - oil, gas, coal, and the atom.

The merger is part of an awesome trend that is building up speed while the South-East case waits its turn on appeal in the courts. Within a few months after the Consol-Continental merger, Peabody Coal Company was absorbed by the Kennecott Corporation, and Island Creek Coal Company was absorbed by Occidental Oil. These three coal companies, with a handful of other giants, had already spearheaded the drive that gave 15 companies control of more than half of all American coal production by 1967 (18 years earlier, before the creation of the BCOA and the unpublicized labor-management alliance, the top 15 companies controlled only 26 per cent of production). Their absorption by giant oil companies has created super-giant corporations whose full strength is just beginning to be felt by the American public.

Two of President Nixon's most important Cabinet appointees -- Secretary of the Interior Walter J. Hickel and Secretary of the Treasury David M. Kennedy -- are no strangers to the super-giants. Hickel was Governor of Alaska when huge oil reserves were found under the state. He is said to owe his new job to Robert O. Anderson, chairman of the board of Atlantic Richfield, the oil company which discovered the reserves and is handicapped by being prohibited from drilling on federal lands in Alaska set aside for conservation by former Secretary of the Interior Stewart Udall. Anderson went to Mr. Nixon on Hickel's behalf, and a few days later Hickel got into trouble with his now-famous statement opposing conservation-for-conservation's-sake. Hickel will, of course, have mine safety under his jurisdiction because the Bureau of Mines is part of the Department of the Interior.

Kennedy's old bank, Continental Illinois National, has interests in Continental Oil and other oil companies.

The interlocks between these super-giants and super-banks are only now beginning to emerge.

This may, of course, be an unnecessarily dour view of the world. George Love is not admitting that he ever conspired with anybody to monopolize anything. For him the question of his relationship with John L. Lewis is a more personal thing. "Mr. Lewis claims he made a man out of me," Love said recently, "and I claim I made an enlightened labor leader out of him. I don't know who won."

The question is interesting. With the unemployed miners of Appalachis and the dead miners of Mountaineer No. 9 in mind, however, it may be more relevant to ask, "Who lost?" Or perhaps, with the future activities of the oil-coal combines in mind, "Who's next?"

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