

[fol. 467] offered on the market than really is. Under those conditions the offering of 10 cars might mean to buyers 100 or 150 cars. Very little coal, generally speaking, is stored at the mine. The amount would be infinitesimal as compared with the whole.

The difference between the delivery price and the mine price is the transportation charge from the mine to the destination. Delivery price really makes competition. The buyer is interested in the price at which he can obtain the coal delivered at his plant. (767) Between 1923 and 1927 we were paying in Ohio a wage rate of \$7.50 a day. I am familiar with operations generally throughout the State of Ohio. During that period the entire State of Ohio was unionized and employees were members of the United Mine Workers organization. All of the State of Ohio went through with the agreement with the United Mine Workers until March 31, 1927. Strikes developed after that. I am familiar with conditions in the mining fields in the western part of Pennsylvania. From 1923 to 1927, for the most part, western Pennsylvania was under contract with the United Mine Workers. (768) There was some non-union coal produced in western Pennsylvania but most of the commercial mines had a contract with the United Mine Workers at \$7.50 a day. The mines in western Pennsylvania that were under union contract did not continue operating during all of that period at the union rate. The effect of the reduction in wages in the unorganized fields after the signing of the Jacksonville wage agreement was felt more promptly and more keenly in western Pennsylvania than it was in some of the other districts. The largest mine that [fol. 468] we operate there, producing 3,000 tons per day, shortly after the Jacksonville wage agreement went into effect, was unable to get enough business to operate and was shut down for 22 months and did not resume operation until May 26. In the meantime, the economic pressure in that district became so great that in the early part of 1925, the largest producing company in the district attempted to put its mines on an open shop basis and that struggle continued for something over a year. Other companies at different times attempted the same thing. (769) At the expiration of the 22 month period during which our mine was closed, our miners came to us and petitioned us to put them back to work at the union wage, which, after some

negotiation, we finally consented to do. As a result of that action at one mine all our other miners in western Pennsylvania went on a strike, and one of our mines was idle from that time until nearly two years later. (770) One of the others was idle for about 18 months. Consumers who had been using coal from western Pennsylvania were obliged to go to other states for their supply. This was caused by the inability of producers there to compete on the high wage scale in competition with the unorganized fields that were on a much lower basis. The production of western Pennsylvania during that time went down very much. The production of my own company in western Pennsylvania in 1924 was just about half what it was in 1923. We remained at a very low figure until several years later, when we were on an open-shop basis and were able to more nearly meet [fol. 469] our competition. (771) From the period of 1923 until the adoption of the NRA code there was no single year at our mines in western Pennsylvania or Ohio that realized a price equal to cost. In every year the average cost exceeded the average realization. The cause of this disparity was the intense competition we had to meet to try to stay in business.

(774) I have personal knowledge of only our own wage rates, in the unorganized fields south of the Ohio River during the period 1923 to 1927. I know, in a general way, about other rates but can speak from personal knowledge only of the rates we paid our mines in Boone County in southern West Virginia. That territory had been organized for some time but went on an open-shop basis, according to my recollection, some time in 1922.

(228) During the course of his reply to Mr. Dickinson's opening statement, Mr. Whitney made the following remarks:

"There is one point, I am happy to say, that we are really agreed upon, and that is that f. o. b. sales are sales in interstate commerce. We do not make any suggestion that if we resort to unfair competitive practices in our f. o. b. sales, unfair methods of competition, we are not subject to regulation today by the Federal Trade Commission. One of our Circuit Courts of Appeal was reported last week in a case enjoining a certain operator from calling his coal "New River Coal", as being an unfair method of competi-

tion in f. o. b. sales, with another operator who really had New River Coal.

“Of course, all those things are being done today by the Federal Trade Commission, and there is no question about that. We do not suggest that the f. o. b. sales are themselves wholly intrastate.”

(781-783) Mr. Whitney objected to the following question by Mr. Critchlow to Mr. Findlay:

“Q. Mr. Findlay, I wish you would tell us in some detail what the course of business is in the coal industry with reference to the way in which orders are solicited, what is done with orders when they are obtained, and how the orders are filled. Do you understand my question?”

During the course of a colloquy among counsel and the court, the following statements were made:

“Mr. Critchlow: The question has to do with f. o. b. sales, whether or not in this industry the business is carried on in a way so that sales which have been referred to here as f. o. b. sales are sales in interstate commerce. That is one of the issues, the course of business in that respect.

The Court: I understood it would be admitted by Mr. Whitney that this would refer to that, that they would be sales in interstate commerce.

Mr. Critchlow: If that is admitted I will not ask the witness to answer the question.

Mr. Whitney: I have not changed my mind since I admitted it, so I will not repeat it.

Mr. Critchlow: You seemed to make the admission at one time, and then later to change it.

Mr. Whitney: Let me look it up in the stenographic record.”

Nothing further was said on the subject by Mr. Whitney.

Mr. Critchlow then asked Mr. Findlay the following question:

“Mr. Findlay, it is a fact, is it not, that it is customary in this industry to make sales f. o. b., with the understanding between purchaser and seller that the shipping instructions are to be handled by the seller, and that the coal is

to be destined to a particular point and not be stopped in transit or re-routed by the purchaser, is that correct?"

(783) There are two kinds of sales in our industry. One is what we call f. o. b. mine sales and the other what we call f. o. b. some destination point. In most regular contracts the contract of sale provides for f. o. b. mine prices. The contract also specifies that the coal is for delivery to a consumer at a certain point. Most contracts also specify that there shall be no diversion of the coal without the consent of the seller. In handling that at the mine, the producer's shipping clerk will order the cars to take care of the orders, will bill the coal out and see that the cars are tagged, and will furnish a bill of lading to either the buyer or the company; (784) that is the custom. We have many [fol. 470] sales in the industry, for instance, like Lake sales, or tidewater sales, that are made f. o. b. a certain destination point. The sales we make from our docks for the most part are made f. o. b. cars at the dock and in those cases we prepay the freight and all transportation charges, both rail and water, and whatever charges are necessary to take care of the cost of transferring coal onto cars at the dock. There are also sales made at tidewater and at the Great Lakes f. o. b. vessel. These various classes would cover the great bulk of the sales that are made in the coal industry.

From 1923 to 1927 the Ohio, northern West Virginia and western Pennsylvania fields were all under contract for their labor with the United Mine Workers of America and were paying for the most part the \$7.50 a day scale. (785) The trend of mine realization prices in those fields was progressively downward from 1923 on into 1934.

(786) [There was offered and received in evidence as Defendants' Exhibit No. 23 a table entitled "Average value per ton of coal at the mines by States, 1913-1934".]

In the period from 1923 to 1928 it was impossible because of the conditions prevailing and the constant drop in prices to secure a realization for coal which would be equal to cost. Mines for the most part in my district were receiving varying but falling prices. (787) That reduced very materially the number of producing mines. It forced producers to concentrate their production in their most fortunate and lower cost mines and forced out many

of the higher cost mines. My own company in the past 12 years has been in 6 mines in Ohio. At least five of those will probably never be opened up again. I think the mines are representative of the conditions there. (788) As a result of the abandonment of those mines there will be a very considerable acreage of coal which can never be recovered. Under different circumstances it would have been possible to have operated those mines and recovered that coal. (791-792, 796) [Mr. Whitney then stipulated that conditions in the mining communities occasioned by decline in price brought about the closing down of many mines; that this threw many men out of employment; that whole communities built up around those mines and dependent entirely upon the mines were left without substantial means of support; that the effect of this condition was a disastrous effect on the other side of the industry; that there were men in the settlement located nearby, inhabited by miners, and that some moved away and some stayed there and those who stayed there, having no means of livelihood, were like other people who had no way of earning a living.]

(796) The decline in prices caused a marked decline upon the shipment of coal from the State of Ohio into certain areas.

(798) [There was offered and received in evidence as Defendants' Exhibit No. 24—A table entitled "Shipments into Indiana, years 1920-1934 inclusive"; as Defendants' Exhibit No. 24-A—A table entitled "Shipments into Ohio, [fol. 472] years 1920-1934 inclusive"; as Defendants' Exhibit No. 24-B—A table entitled "Shipments into Michigan, years 1920-1934 inclusive"; as Defendants' Exhibit No. 24-C—A table entitled "Trend of Lake cargo shipments, 1920-1931 inclusive"; and as Defendants' Exhibit No. 24-D—A table entitled "Trend of tidewater shipments since 1920".]

(799) I should like to point out two or three outstanding examples of the trend. On Defendants' Exhibit No. 24-C the tonnage shipped to the Lakes from Western Pennsylvania in 1923 was 9,528,966 tons. By 1925 that had dropped to 2,479,083 tons. In the matter of shipments from Ohio to the Lakes, in 1923, they were 5,941,938 tons and by 1925 had dropped to 1,450,230 tons. Correspondingly the tonnage from the southern high volatile fields in 1923 to the

Lakes was 8,262,571 tons and by 1925 had doubled and were 16,321,178 tons. Two years later it had increased to 18,883,908. In the four year period the southern high volatile producers had increased their Lake cargo shipments by over 10,000,000 tons. (800) There were strikes during that period that affected somewhat the tonnage shipped from western Pennsylvania. A strike started there in 1925. There were no strikes to speak of in my district from 1924 to April 1, 1927. It is my recollection that there was a change during that period in the Lake cargo freight rates which increased the differential in favor of Pennsylvania and Ohio coals. I think that Lake cargo decision was made in 1925.

(801) Due to the very extreme competitive conditions [fol. 473] that developed after the Jacksonville wage scale was entered into it became necessary to put the mines in northern West Virginia, western Pennsylvania and Ohio on an open-shop basis in order to try to meet that competition. In trying to do that there were many strikes in those areas. Those conditions became worse after all the mines went on an open-shop basis. Instead of having only the competition of the open-shop mines in other districts, the mines were then competing with each other in the same district, and it got to the point that there was really nothing but chaos in all these fields. It was in many instances impossible to know what your neighbor was paying in the way of wages, and when you would go out to bid on a piece of business it would be impossible to know whether you would have to bid within 5¢ or 50¢ a ton of the price at which the business would be awarded. There was no stability whatever in the industry all during the period between April 1, 1927 until the fall of 1933. Conditions became progressively worse throughout this period. (802) The wage trend was down. The wages in Ohio, northern West Virginia and western Pennsylvania got down as low as between \$2 and \$3 per day. The miners in some cases did not average more than three days work per week, except in certain mines that had special business to give them better operation. In the early part of 1933 the men in those fields in most cases were not earning more than \$6 to \$10 a week to keep themselves and their families. (803) Prior to 1927 the wage rate in that area had been \$7.50 per day until the companies started to break away from the Jacksonville

wage scale in the latter part of 1925 and 1926. (805) Mr. O'Neill's testimony as to the manner in which wages were [fol. 474] fixed in the central competitive field during the period from 1927 to 1933 is substantially correct.

(806) The organized workers resented the attempt to put others into their jobs and resisted as hard as they could. They would not themselves accept a lower rate and it was necessary to bring in miners from other sections. That resulted in disorders. We had one case in our mine in northern West Virginia when the mine workers set our mine on fire and that mine was sealed for three months during which time we could ship no coal. The mine has a capacity and was shipping at the time about 2,500 tons per day. The coal was practically all sold in interstate commerce. We were not able to take care of our contracts during that period on our business in other states. The same property was hampered at that time by the blowing up of a railroad bridge leading up to the property which interfered with our shipments. I am mentioning that as only typical of many things of the kind that happened in these fields while this struggle was going on. It is my recollection that the fire occurred in the latter part or toward the middle of 1926. (807) At that time, my company was under contract with the United Mine Workers. After the mines were shut down for some time some of our men came to us and asked us to put them to work, which we agreed to do at a wage lower than the contract wage. The other men resented that and resisted it and that is what brought about the trouble which I have described. It was a case of economic necessity.

[fol. 475] By the Court:

(808) The \$7.50 daily contract rate continued but in western Pennsylvania and northern West Virginia some of the operators broke away from that before the expiration of the agreement. The Jacksonville agreement became effective on April 1, 1924, and ran through until March 1, 1937. That was an agreement with the United Mine Workers, by the organized fields.

By Mr. Critchlow:

(809) [Mr. Whitney stipulated that the western Pennsylvania operators broke away from the Jacksonville agreement when Mr. O'Neill said they did.]

(810) The mine price of coal in my area, Ohio, western Pennsylvania and northern West Virginia continued to fall from 1928 to 1933.

There was a slight upturn in those states in prices in 1933 due largely to the fact that the NRA code became effective on October 2, 1933 and that code prices were established on a basis considerably higher than the prices that had prevailed prior thereto. (811) Wages were also established at much better standards and as a result of the NRA code the entire industry became stabilized and was put on a basis where the miners could make a reasonable wage and the producers a small profit which was something the industry had not had in over 10 years. Just prior to the formulation of the code conditions were worse than at any time during my 30 years in the coal industry. Wages were low and men could not earn enough to live on and keep their [fol. 476] families. There was distress everywhere. The capital assets of most of the companies were being rapidly depleted, and the industry as a whole was very rapidly drifting into bankruptcy. Even the stronger companies were having a difficult time to maintain themselves. It would only have been a question of time, I think, when the strongest companies in the United States would have been forced into financial difficulties. A number of the large companies were already in financial difficulties. One of the largest companies in the country, the Consolidation Coal Company, was in receivership at that time. (812) There were a good many others in receivership. Many went into bankruptcy and had to pass out of the picture entirely. The operators in those areas continued to operate to keep their position in the industry. When you open a coal mine and get it under way it is not an easy matter to abandon it. You have certain fixed charges that go on continuously whether you are operating it or not, such as minimum royalties, taxes, and supervision around the mines. It is frequently the case that you lose less money by continuing to operate than you would by shutting down entirely. That brings about a struggle for business because the mine that can run full can produce the coal at considerably less cost than a mine that will run 50% or 60% of the time. It has been that condition, very largely, that has intensified this competitive struggle. Since May 27, 1935, the very intense [fol. 477] competitive struggle was resumed and is becom-

ing worse day by day. I know of many cases where coal is being sold today at figures from 25¢ to \$1 per ton below the actual cost of producing the coal. (813) Those are spot sales. Most of us have contracts that have carried over from the code period so that we are getting a better realization than those prices would indicate, but if the struggle continues without regulation we are going back to the same conditions that prevailed in 1933, even more intensified, I think. I know of no attempt made by separate states to stabilize the industry and help it out except one that took place in a conference of the governors of several of the states back in 1930 or 1931. As a result of that conference, the movement for the organization of central sales agencies developed. That is the only thing I know of that developed at all, of any practical nature, as a result of that conference. The purpose of that conference was an effort on the part of the governors of those particular states to bring about some plan for stabilizing the industry. (814) I do not think they ever had any definite plan. It was just a conference, so far as I have been informed, to discuss the situation and see if it would be possible to develop any feasible plan for stabilization of the industry.

After the Supreme Court decision in the Appalachian case an organization was set up covering the eight districts in that area and one also was set up in Ohio shortly after Appalachian was organized and a second one sometime after [fol. 478] that. Those three organizations are the only ones that I know of that have really functioned. My company was a member of Appalachian Coals, Incorporated, for our southern West Virginia property. I was chairman of the organization committee that set up Northern Coals, Incorporated, in Ohio, and was a director of that company after it was organized. We in the industry for the most part accepted that plan in the hope that we might be able to work something out of it of a practical nature and stabilize the industry. Appalachian Coals and Northern Coals did succeed in improving the methods of selling their coal and probably did considerable good in extending the distribution of their coal. They furnished combustion engineers to go out and help show the buyer how to use their coals. (815) In ways like that they were very beneficial, but as to stabilizing the industry they have been very ineffective for the reason that they were not able to get all

of the producers in the respective districts into their organization. Those that remained out set the price for those that were in and they had competition from other districts that were not organized in any way. The net effect has been that it has been impossible to maintain any fair price structure through those organizations, although, when they started, we were all hopeful that something of the kind might be developed and we would be able to get a price for coal which would enable us to do what we finally did under the code, pay our labor a reasonable wage and at least come out even on our sales. I have studied that situation very carefully and have been living with it for some time, and I am absolutely satisfied that there is no way in this industry that it can be stabilized without some effective Government force bringing about that stabilization. The industry just cannot do it itself.

The industry under the Bituminous Coal Conservation Act will probably not realize prices that will be in excess [fol. 479] of cost. Minimum price area No. 1, for instance, which produces over 90% of the coal that is produced, in the ten month period from April 1, 1934 to January 1, 1935, under the NRA code (816) had a total weighted cost of \$1.83 and a total realization of \$1.86, realizing a margin over cost of approximately 3¢ per ton. Under the Act, so long as there is a large overproductive capacity pressing for a market, in my judgment the minimum price will be a maximum price, except in times of emergency, so that the aggregate prices of that entire area will probably not exceed the total weighted cost of producing the coal in that area. Prior to the NRA code we were all selling coal way below the cost of producing it and were paying our labor starvation wages so under the code we raised the wages to the labor and also raised the price of the coal so that there was a material increase in the sales price of the coal after the code went into effect. (817) It has been customary in the coal industry for many years to charge a greater price for prepared sizes than for fine coal. That custom was followed to some extent under the NRA code in the pricing of coals. There is also the question of industrial competition. For the most part industrial buyers are large buyers and the custom of the coal operators has been to try and attract those people with a lower price. There is also involved competition with other fuels such as oil and gas and

I think there is a necessity of keeping those sizes possibly below some of the other sizes. It is a fact that due to the higher price for the prepared sizes the domestic consumer [fol. 480] pays more than his fair share of the total realization for the coal. (818) That was corrected to some extent under the code. We got a better realization for the fine sizes than we had prior to that time and I think that would be the result under the Conservation Act.

I think that the effect of stabilizing hours and wages in the manner provided for by the Code provisions of the Act will be to put the industry on a permanently stabilized basis. I base that on the results obtained from the NRA code. I think this will work very much the same way.

If there is a decrease in the hours worked per day and the same total wage paid for the decreased hours, it increases hourly compensation to the men, and the opposite would be true if the hours were increased. It has been the custom in the relationships that have existed between the producers and the organized mine workers to tie together wages and hours in their negotiations of wage contracts.

(819) Cross-examination.

By Mr. Whitney:

Contracts that call for f.o.b. sales and deliveries are usually based on wages being paid in the mines at the time the contract is made. They do not customarily contain provisions providing for the details of the wage scale in the mines. Some contain a provision that the price goes up or down with the increase or decrease in wages. (820) It is not usual for these contracts to specify what the wages or [fol. 481] hours of the men at the mine shall be, what shall be the conditions in the mine as to collective bargaining with the men or what shall be the safety provisions and conditions in the mine. The buyer has nothing to do with that.

Referring to Defendants' Exhibit No. 23, the fact that Ohio had an average realization in 1923 of \$2.43 and an average realization in 1933 of \$1.20 being a decline to 49% is a serious decline. (821) The decline in West Virginia of mine realization average from \$2.65 in 1923 to \$1.14 in 1933, a reduction to 43%, was apparently more serious than the Ohio decline. I would say generally that West Virginia

coals are superior in quality to Ohio coals, although some are of equal quality and others probably not so good. (822) A substantial reduction of realization would reduce the number of producing mines in any district, including West Virginia. It would also make it impossible for West Virginia operators to get their costs back.

It is a good thing that production be concentrated in the more efficient and lower cost mines. That will be brought about under the Conservation Act.

(824) My judgment would be that by the end of May or early in June many producers were selling their coal at from 10¢ to 25¢ below cost this year. That would not be the general weighted average in minimum price area No. 1. I am speaking of spot sales.

(827) In view of the increase in cost of production due to the increase granted the miners under the new wage [fol. 482] scale, there probably will be some slight increase in the weighted average of prices in minimum price area No. 1 under the Bituminous Coal Conservation Act during the first year of operation over the prices that existed under the NRA code. They will be higher than the prices that existed in June, 1935, after the NRA code had come to an end. (828) I think in most districts the increased wage will amount to somewhere around 15¢ a ton. I think that will be about the average. I cannot tell how great will be the average increase in price. (831) In June of 1935 we were not still operating under the NRA code. (832) Prices will be higher under the Act than they were in June, 1935. When I testified at the end of June, 1935, before the House Committee as follows:

“Mr. Cooper. Is it your thought that there will not be any increase in the price of coal if this bill should become law.

“Mr. Findlay. My honest judgment, Mr. Cooper, is that there will be no increase in the price of coal, based upon the present wage scale. In fact, I think it will be a few cents less.”

I was thinking about NRA prices.

(835) When I testified before the House of Representatives in June, 1935, that

“When we sell coal, as we are doing today, from 30 to 50 cents a ton below cost approximately, you cannot continue to get enough money to pay those wages.”

I was talking about spot prices. (837) I would not say that spot prices give a representative view of prices prevailing at any time. (845) With respect to Defendants' [fol. 483] Exhibit 24-C, it is shown that western Pennsylvania's production increased from 1927 when it was 3,597,150 tons to 8,541,399 tons in 1930, Ohio increased from 344,834 tons in 1927 to 3,363,295 tons in 1930, and the southern high volatile coals decreased from the figure of 18,833,908 tons in 1927 to 15,798,367 tons in 1930. I would not derive from that that the southern high volatile field was taking away the markets of Ohio and western Pennsylvania. There were different conditions that prevailed during those years, starting with 1927. Western Pennsylvania districts were already on an open shop basis, and Ohio started in that year to go on an open shop basis, and as they got their wages down to lower levels they were enabled better to compete with the southern fields. I cannot say whether Ohio will get further tonnage back under the Bituminous Coal Conservation Act, (846) but there is nothing in the Act that would indicate that they would. I do not believe Ohio can hope to increase its production under a proper coordination of prices, which the Act provides for, beyond what it had approximately for the last year or two.

Despite the increase in production in Ohio high volatile from 350,000 to 2,096,000 tons in 1933, there was no stability in the industry. I mean by stability to have the industry on a basis where it can pay its labor a fair wage and get at least cost and possibly a small profit out of the sale of its coal. In 1927 we started off, as I recall it, on a \$5 a day wage scale. (847) I have not any figures as to what [fol. 484] the annual earnings of labor in Ohio were in 1927. The mine workers did not get fair annual earnings because the state was on strike practically all of that year.

In 1928 I advocated stability. I had a plan which I wanted to submit to the Senate Interstate Commerce Committee, which was investigating the industry at that time, which contained a good many of the same features that the present Act contains. I submitted it to a group of coal

operators who turned it down and asked me not to put it in because they were fearful that it would, if submitted to the Committee, bring the union back into the picture. (848) I was of opinion right along that the union would have to get back into the picture before we had any stability. (849) In 1928 I felt that if we got fair freight rates in Ohio we could hold our own. I think the differential at that time over southern West Virginia in shipping a ton of coal to be delivered ex-Lake was 28¢ in favor of Ohio. The differential today over southern West Virginia is 38¢. (850) Ohio, therefore, has 10¢ more advantage over West Virginia than in 1928 so far as freight rates are concerned.

Prior to the mine fire in our West Virginia mine in early 1926, we had a contract with the United Mine Workers, the Jacksonville agreement. By its terms that was to run three years from April 1, 1924 to March 31, 1927. Our mine was open on the day of the fire and operating. I do not recall the exact wages we were paying but that was after we [fol. 485] had started the mine on an open shop basis. The wages were lower than called for by the Jacksonville agreement.

(851) A substantial number of our men came to us and petitioned us to put them to work at less wages. Some of the men did not see fit to go along with that program and fought it. We went ahead with the program just the same. (852) That might have been a technical breach of contract. It was a case absolutely of self-preservation. That mine sells in competition with western Pennsylvania, Ohio and some of the high volatile fields. That mine had been producing 2,500 tons a day and the tonnage for all of those fields would run into several million tons a day. In 1926 there were a number of other cases in the northern West Virginia field whose mines were burnt down and there were violent labor disturbances in western Pennsylvania. (853) I do not recall whether the circumstances were the same as at our mine in northern West Virginia but there were stoppages due to picketing, violence, etc. I would not be able to even guess as to the approximate number of tons per day those stoppages amounted to. This was one of a number of similar occurrences. The number of mines destroyed at that time would be small in relation to the percentage of production of the entire field.

(854) In the year 1933 we only had the benefit of three months of the Bituminous Coal Code, which was not reflected to any great extent in the average realization for that year. We did not feel the full force and effect of the code under the N.R.A. until 1934. The NRA code went into effect on October 2, 1933. Commencing with that the industry felt the improvement in conditions, from that time on for the balance of 1933. (855) This was largely due to increase in prices. When I referred to the entire industry, that possibly was too broad a statement. What I had in [fol. 486] mind was the industry east of the Mississippi River. I know nothing about Texas or any of the western states or what their conditions were. Their tonnage is very small compared to the total. The area I speak of east of the Mississippi River produces from 90% to 91% of all coal produced. As I recall Mr. Tryon's testimony the very large acreage of coal that is left in this country is in the west, but is at present inaccessible to the consuming markets.

The chief reason for the NRA code breaking down was lack of enforcement. (856) It had some criminal provisions in it but they were not enforced. There are a number of provisions in the Conservation Act that provide for adequate enforcement if they are exercised. (858) One goes to the Bituminous Coal Commission's authority to issue cease and desist orders. There is also Section 14 which provides that the Government and governmental agencies shall buy only from code members. There may be others there that I do not recall. (859) So far as the tax feature is concerned, as I see it, the coal producer either has the option of going into the Code or of staying out of the Code. There is nothing there to compel him to go into the Code so far as I interpret the Act. (861) My company had not made 13½% of its sales price in the form of net profits at any time within the last five years, nor do I know of any companies in my district which have.

There was competition during the NIRA in the coal business. I do not think prices fell below cost during the [fol. 487] period of the NIRA. I do not think they fell below cost after January 1, 1935, because there were contracts that ran over that period that would bring the average

realization probably equal to or a little better than cost, taking the industry as a whole. (862) There may have been some sections where there was a loss. I do not know what was the weighted average realization in minimum price area No. 1 from January 1, 1935, to May 27, 1935. (863) I would say that the total average realization in some districts, due to contracts that carried over, would be better than cost, and in other districts would probably be below cost.

(864) It was my belief in June, 1935, that there would not be a wage increase when the agreement came up for renewal. There was such a wage increase on October 1. (866) The industry was not stabilized in June of 1933. For about one year the NRA code was very well observed and I think the reason for that was that the industry as a whole thought the provisions of the code would be enforced. When it developed that they were not to be enforced, many producers then started out on their old tactics of trying to get business and reduced their prices and tried to take business away from their competitors. (867) That had an effect upon the entire industry because there was enough of that done in almost every district to affect business of almost every producer. I think the code was of very great benefit to the industry. I think the new code will work satisfactorily for much longer than a year. I think there [fol. 488] are provisions in this code, by Act of Congress, that will give the enforcement bodies opportunity to effectively enforce the code, which they did not have under the old code. I tried to enumerate these provisions in my earlier testimony. The provision with respect to public contracts is one of them. I think there was a provision under the NIRA that no company could have public contracts if it sold coal in violation of the code. I also refer to the power of the Commission to issue cease and desist orders. (868) I do not recall that there was the power to issue cease and desist orders and to have injunctions against violators of the old code. I may be wrong on that, however. There was not a tax in respect of the NRA code. (869) I cannot think of any other enforcement provision in the new code that differs from the old code.

Referring to the governors' conference with respect to which I personally testified I do not recall how many gov-

ernors there were. I think the states represented were mostly from the coal bearing states south of the Potomac River. I do not put much emphasis on the governors' conference. I just brought that out as leading up to the formation of the Appalachian organization.

(870) I was a member of the legislative committee of the National Conference of Bituminous Coal Producers, which advocated this statute.

[fol. 489] (871) In addition to not getting all the producers in, marketing agencies were ineffective because of competition from districts outside that did not have such organizations. This affected their ability to maintain satisfactory prices. Any agency of that kind would have to have fully 90% of production to become effective. I would say that the present Code should have at least that percentage in it to be really effective.

(874) Prior to the enactment of the present Act and since the NRA code, labor relations in Ohio have been subject to agreement with the United Mine Workers. These relations have been pleasant and happy.

By the Court:

(875) It does not cost more per ton to mine the selected grades than the run-of-mine coal. The cost of screening is very, very slight. The only difference in the cost of prepared as against mine-run is the additional cost of screening and possibly picking the prepared coal a little more carefully than you would mine-run which might be going to an industrial consumer who was not quite so particular.

By Mr. Whitney:

I do not know of any company which I honestly believe [fol. 490] makes a net profit of more than 13½% of its sales price.

(876) Redirect examination.

By Mr. Critchlow:

I have not the exact figures on what percent of capacity the mines in Ohio have been operating during the period of January 1 of this year, but I would estimate an average

of about 60%. Costs per ton decrease as mines run more nearly up to capacity.

(879) A producer in Ohio that was on a wage cost 25% below its competitors could get sufficient business to run his mines 100%. If he ran his mines 100% as against 60% in Ohio, the saving in cost would be, varying with the mine, somewhere between 20¢ and 27¢. By that process alone he would save that much in his cost, plus whatever he might save through his lower wage scale. In that case, the saving in labor costs would be a reduction of 25% of about 65% of total production cost.

(881) Competitive rivalry between states with reference to the production of coal is such that in my judgment it would be almost impossible to bring about interstate compacts in the coal industry.

(882) When we screen coal we make slack as well as larger sizes. Run-of-mine coal when screened comes out in different larger sizes and different smaller sizes, or slack. The cost of screening coal per ton would depend entirely [fol. 491] upon the character of equipment for screening but it is a very small item of cost. I would say it never would cost in most fields in excess of 2¢ to 5¢ a ton.

[fol. 492] (906) HARRY L. FINDLAY, a witness heretofore called, resumed the stand and testified further as follows:

Direct examination resumed.

By Mr. Critchlow:

I have been over the testimony which I gave before the subcommittee of the Committee on Ways and Means of the House of Representatives on House Resolution 8479 in June of this year. The testimony I then gave with respect to whether or not the Act would increase prices was given with reference to NRA code prices, as is indicated by the entire line of testimony given at that time.

[fol. 493] (883) GEORGE W. REED, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Critchlow:

I am a director and vice-president of the Peabody Coal Company. I have been in the coal business 33 years in sales and distribution. I have been with the Peabody Coal Company for 19 years. The Peabody Coal Company directly and through its subsidiaries has coal mines in Oklahoma, Illinois, Indiana, Kentucky and West Virginia, the large interests being in Illinois.

(884) I am most familiar with the producing areas in the middle west but familiar to some degree with those in the eastern and southern states. Our Illinois coal is sold largely in Illinois, Iowa and Missouri. We do ship quantities every year to 13 other states, as far south as Louisiana, the Dakotas, Kansas, Nebraska and intermediate states. In these markets, our coal comes into competition with coal from Alabama, Tennessee, Virginia, Kentucky, West Virginia, Pennsylvania, Ohio, Indiana, Missouri, Iowa, Arkansas, Kansas, Oklahoma, Wyoming, Colorado and North Dakota.

I am familiar with the general practice in the coal industry relative to the way orders are solicited and shipments are made. (885) Distress coal is a term applied to coal which may be shipped unconsigned, which has reached its [fol. 494] destination about to accrue demurrage or actually accruing demurrage, or coal which is held unbilled on mine tracks with other coal which, together, makes an amount which, if held, will prevent or make it impossible to receive any more empty cars under present-day railroad regulations. All of us selling coal do our utmost to sell a balanced tonnage, meaning by that that at the mines which separate their coal into different sizes we will have a certain percentage of lump, another percentage of egg, another percentage of furnace, and another percentage of slack. We seldom find a balanced demand for all those sizes, so that in the operation of a mine producing screened sizes we accumulate more of one size than another at different times of the year. That comes about because we obligate ourselves to make shipment and delivery of certain sizes before the coal is mined. If our mine tracks were filled and we had no obligations to ship the next day we would not sacrifice any of these sizes in order to secure cars on which to operate the

next day. (886) Coal is not mined in areas with which I am familiar at railroad-shipping mines before railroad cars are received at the tipple to receive the coal. We have had quite a growth in this country in the last two years of small mines served by motor trucks. I know of no other classes of mines than mines served by railroads and by motor trucks.

In the period from 1923 to 1933, production in Illinois dropped from 78,000,000 tons to 35,000,000. The 1933 production [fol. 495] was 45% of the 1923 production. The entire production of the United States in 1933 was 60% of the entire production of 1923.

(887) Coal from states other than Illinois is shipped into Illinois for consumption. The drop in production in Illinois during the period referred to was caused by lower prices made by competing districts. Our production is determined entirely by the amount of coal which the producers operating the Illinois mines can sell. When the prices and transportation charges together of Illinois coal are higher relatively, based on value, than the mine prices and transportation charges of competing coals, Illinois does not get any business. During that 10 year period there has been constant reduction in mine prices in Illinois. The drop in mine realization price for Illinois from \$2.50 in 1923 to \$1.46 in 1933 (as illustrated by Defendants' Exhibit No. 23) reduced the number of mines in operation in Illinois from 374 to 159, with about the same number of days of operation. It materially reduced the number of companies producing coal during that period. The few who were able to survive were those who were fortunate in having financial resources or being in a position to secure financial help. (888) Those of us who own more than one mine have concentrated our operations so as to get the lowest possible cost. Many of us have made heavy capital investments to secure lower costs and to be able to ship a better value coal. [fol. 496] (889) The number of mines was reduced for two reasons. Most of the producers either went into bankruptcy or closed before they reached that stage. Others of the closed mines are the property of companies still in existence and were closed so as to concentrate the production at other mines. The number of mine workers in Illinois has been reduced from 90,000 to 30,000 in that period. The

rates of pay, daily, and the yearly earnings of the Illinois miners have been materially reduced.

Illinois has worked under agreements with organizations of employees since 1897. I do not recall an attempt to operate outside of an agreement with the mine workers' organization in the last 20 years. During the period 1923 to 1933 we had two strikes. There was a suspension from April 1 to October 1 in 1927. (890) There was a suspension from April 1 to August 9, in 1932. There was one in the last week in September, 1935. The suspension in 1927 affected all the mines in Illinois. I do not recall that in that period there was any mining operation in Illinois. During that period the Peabody Coal Company was under contract to ship coal outside the State of Illinois and I assume that some, if not all, the other producers also had obligations to ship. During the suspension we did not ship the coal on which our obligation rested. The cause of the strike was a difference of opinion between representatives of the producers and the representatives of the mine workers (891) as to whether the coal industry of Illinois could go any further on the wage scale which we had then had for five years. The basic wage scale was \$7.50 per day. Mining operations were resumed on the first day of October on the \$7.50 wage scale with the understanding that starting immediately thereafter or certainly not later than the next spring we were to try to negotiate new wage scales. We did reach an agreement in either July or August of 1928 which provided for a basic wage scale of \$6.10 per day.

The production of Illinois in 1928 was 54,284,000 tons. In 1923 it was 78,616,000 tons. (892) The production in 1933 was between 35,000,000 and 36,000,000 tons. That tonnage was lost by Illinois because of inability to meet the prices made by competing districts. The \$6.10 wage scale was maintained until April 1, 1932. After a suspension between April 1 and August 9 an agreement was reached for \$5 per day as the basic wage scale. My recollection of the period of that suspension is that some of the stripping mines operated through those four or five months. S-ripping operation is one which mines its coal with a large shovel by stripping the dirt and rock above the stratum of coal and then picking up the coal and loading it into railroad cars with a steam or electric shovel. (893) In 1932, when that strike occurred, my company had contracts to

ship coal to points outside the State of Illinois. We did not make the shipments of the particular coal under contract [fol. 498] tract nor of coal produced in the state of Illinois. We got the coal with which to fill those contracts in other states. That coal did not apply on those contracts. Our contracts carry a clause which relieves us of the obligation to ship when the mines are closed by differences with employees. In most cases the people to whom we have been shipping Illinois coal under contract will ask us to secure for them supplies from other states during the periods when our mines are not in operation. At that time we secured most of the coal from Kentucky.

The Peabody Coal Company has a two-thirds ownership in a coal company which operates mines in Harlan County, Kentucky. (894) I have never been able to ascertain definitely the wages paid in operations in Kentucky, except one or two. My impression has been always that the wages we have paid in Illinois since 1923 were higher than those generally paid in Kentucky. I know that the wages paid at the Peabody Coal Company mines in Illinois have been higher than those paid by the Black Mountain Corporation, which is the subsidiary in which we have an interest, at its operations in Harlan County for the last 7 or 8 years, and maybe 10 years. During the period from 1924 to 1927 the wage scale in Illinois was \$7.50 per day. The Black Mountain Corporation paid tracklayers, which is the basic in Illinois, from March 1, 1924, to February 16, 1931, \$5, so that during the three years 1924 to 1927 we were paying \$2.50 per day less in Harlan County than we were in Illinois [fol. 499] for the same class of labor. Between February 16, 1931 and May 1, 1932, the Black Mountain Corporation paid for the same class of labor \$4.80, from (895) May 1, 1932 to August 1, 1933, \$4 per day. In Illinois we paid \$7.50 until July or August of 1928 and \$6.10 from that time until August 9, 1932.

[There was offered and received in evidence as Plaintiff's Exhibit No. 61 a table entitled "Strikes, Suspensions and Lockouts," from Minerals Year Book, 1932-33.]

[fol. 500] (909) GEORGE W. REED, a witness heretofore called and sworn on behalf of defendants, resumed the stand and further testified, as follows:

Direct examination resumed.

By Mr. Critchlow:

I should like to make a correction in two statements which I made yesterday from memory. First, the average number of working days in Illinois mines in 1923 was the same as it was in 1934, not 1933. The average number of working days in 1933 was 131. (910) The correct figures as to the number of mine workers employed was 99,714 for 1923 and 40,660 for 1933.

In 1934, the annual tonnage produced by the Peabody Coal Company was 8,064,000 tons. The smaller the number of days of operation per week the higher is the production cost per ton. The extent to which it will be higher will vary with every different method of mining. There is not so much variation in two mines of the same size with the same method of mining. I would say that in Illinois the average mine is one of a production of 2,000 tons per day. In such a mine, the difference in production cost between operating 3 days a week and 6 days a week would be between 20¢ and 25¢ per ton. (911) Because of the desire to escape the cost of these idle days, there is quite an incentive to any coal producer to move tonnage. If I have been able to sell sufficient coal to operate a mine 3 days per week, I can afford to sell the production for the remaining [fol. 501] 3 days for considerably less money than I must have for the foundation tonnage which is produced in the first 3 days. The tendency is in fixing price to attempt to get total capacity contracted for even at a lower price.

The strikes or suspensions which took place in 1927 and 1932 in Illinois materially affected the amount of coal shipped from mines in western Kentucky.

(913) [There were offered and received in evidence as Defendants' Exhibit No. 25—a chart showing graphically tons of coal shipped from Illinois and from western Kentucky; and as Defendants' Exhibit No. 26—a chart showing coal so shipped in percentages.]

(914) These two charts were prepared by me or under my direction. The figures for the Illinois production were taken from the reports of the Department of Mines and Minerals of the State of Illinois and the tonnages for west-

ern Kentucky were taken from the reports of the United States Bureau of Mines.

(916) Coals produced by the Peabody Coal Company and its subsidiaries move rather generally from the Rocky Mountains to the Atlantic Ocean. We compete in all of that territory. Illinois coal does not move east of Indiana.

(917) Since I have been connected with the coal industry there have been stabilizing influences exerted on the coal industry. On two different occasions, the Federal Government [fol. 502] took action which stabilized the industry for short periods. The only other stabilizing influence I have ever known on the industry was the organization of mine workers.

(918) I regard wage cutting as an unfair method of competition.

(918-920) [There were stipulated into the record by Mr. Whitney and Mr. Critchlow out of the Statistical Abstract, that in 1923 there was an average wage for labor in all manufacturing industries in Illinois of \$27.07 per week, and in 1933 of \$18.28 per week. There was also stipulated into the record the following statement from "Coal in 1927" by the Bureau of Mines:

"The restriction in the union districts, therefore, was counteracted by an expansion of mining in the two largest producing states south of the Ohio which had easiest access to the markets normally served by the northern states. While this expansion, measured in tons, was not sufficient to keep production at the high level of the early months, still it was adequate to supply amply all current demands, and between April and October only 13,100,000 tons was withdrawn from storage."]

[fol. 503] (1136) GEORGE REED, recalled as a witness on behalf of the defendants, testified further as follows:

Further direct examination.

By Mr. Critchlow:

There is a wide distinction between wage reductions secured by agreement between groups of employers and groups of employees, and wage cutting by an individual

operator to secure an advantage against his competitors. When such wage cutting is practiced secretly, as often it is, I think it is more unfair than the practice of giving rebates. The money involved to secure the advantage through wage cutting is furnished by the employees. The money involved to secure the advantage through the giving of rebates is furnished by the employer. (1137) I stated yesterday that outside of the two instances in which the Federal Government had regulated this industry I had never known of any other stabilizing influence than the mine workers' organization. Through dealing with the mine workers' organization, all Illinois coal producers have exactly the same wage scale for men who are paid by the day, and all have definitely related wage scales for men who are paid on a piece-work basis. That gives stability of wages and stability of costs. Any Illinois producer can ascertain the cost of production of every other Illinois producer. Illinois has been working under agreement with the mine workers' organization since 1897, and I know of no operations outside of those agreements in the last 20 years.

[fol. 504] (1138) Further cross-examination.

By Mr. Whitney:

I would say that periodic strikes are not a stabilizing influence if you mean by periodic strikes those that happen every few weeks or months or something like that. I cannot say that a strike is a stabilizing influence in any industry.

Further redirect examination.

By Mr. Critchlow:

In Illinois we had a strike in 1922, another in 1927 and another in 1932. Those were all at a time when the wage agreements that had been existing came to an end or had expired. (1139) The strike was the result of a failure of the employers and the employees to agree upon the terms of renewal. Generally, we do not have strikes during the period of the wage agreements. The operators and the mine workers' organization have set up boards of arbitration to which all differences are referred.

[fol. 505] (1239) GEORGE REED, a witness heretofore called on behalf of defendants, was recalled and further testified as follows:

Direct examination resumed.

By Mr. Critchlow:

Wage agreements arrived at by collective bargaining, in addition to fixing rates of pay by the day and for piecework also provide for maximum hours per day and week. In the organized districts the number of hours per day and days per week prior to October 2, 1933, were 8 hours and 6 days. In the unorganized districts employees were working 6 days per week and generally longer hours than 8 per day. (1240) After October 2, 1933 the hours per day were 8 and the days per week were 5. After April 1, 1934 the hours per day were 7 and the days per week were 5. In the districts which were unorganized after October 2, 1933 the hours observed were the same as in the organized districts. That was during the period of the N.R.A. The effect of the shorter work day and the shorter work week, taking 35 hours per week and comparing it with 48 hours, is that there is an increase in the cost per ton (1241) of production, even though the hourly rate of the men paid by the day and the rate paid on a piecework basis are the same. There are two classes of miners, those who, prior to the reduction in the number of hours per week, had sufficient business to keep their mines in full time operation [fol. 506] throughout the year—which were in the minority, although there are a great many mines, particularly those furnishing coal for domestic purposes, that have during certain months sufficient business to give them full time operation—and, second, mines not having sufficient business for full time operation. In the case of the mines having full time operation a reduction in the number of hours per week had the effect of proportionately reducing the production of the mines, which in turn increased cost of production because the fixed charges remained the same. In the case of the other mines, assuming that there were sufficient business to operate 3 days on an 8-hour basis, when the hours were reduced to 7 hours a day it was necessary to operate the mines more days per month in order to produce the same tonnage. It has been our experience and that of

every other operator who has watched it that there are two hours in each day which are not as productive as the other hours, namely the opening hour and the closing hour. Under the 8-hour day limitation we had 6 full production hours and 2 part production hours. Under the 7-hour day (1242) we have 5 full production hours and the same 2 part production hours. That has the effect of increasing cost per ton when we work the shorter day.

Our Company, through a subsidiary, the Black Mountain Corporation, operates two mines in Harlan County, Kentucky. There have been three companies, including our own, operating mines in Harlan County which produce coal [fol. 507] which is quite similar. We found in 1931 that one of the other companies was paying wages less than we were paying, (1243) working men longer hours than we were, and making prices lower than we could make with any hope of breaking even. That company in hundreds of instances sold its coal to people who had been handling our coal, at prices lower than we were offering. The result was that in an effort to reduce our losses we tried to concentrate our production and one mine was closed entirely through 1932 and until the end of August, 1933. Our production in that space of time dropped from 1,100,000 tons to 465,000 tons, and the company lost in that 19-month period \$333,000. The other company I have referred to continued to operate. Its tonnage increased. (1244) The difference between the wages paid by our company and our competitor, in the case of some classes of employees, meant a difference (1245) as between \$4 for 8 or 9 hours and \$2 for 13 hours, as between \$3.50 for 8 and 9 hours and \$2 for 13 hours, and as between \$2.50 for 8 and 9 hours and \$1.50 for 13 hours. In the case of the mining rate there was a difference of between 45 cents and 50 cents in the case of our properties, and 30 cents in the case of theirs.

Demurrage rates charged by railroad companies on cars containing distress coal reduces the price by the amount of demurrage paid so far as the man to whom the coal is sold is concerned. Any demurrage or reconsigning charge that [fol. 508] may have accrued between the time when the car left the mine and the time when it was delivered to the ultimate consignee at destination is assumed by the man who owns the coal at the time those charges accrue. The regulations provide for a reconsigning charge of \$2.70 for a re-

consignment during the first 24 hours after arrival, and of \$6.30 per car for reconsignment subsequent to the first 24 hours after arrival. The demurrage regulations provide for a charge of \$2 per day for the first four days after 24 hours following 7 a. m. immediately following the arrival of the car, and \$5 per day for the days thereafter. (1246) If a car is held five days the reconsignment charge would be \$6.30 and the demurrage charge would be \$13, or a total of \$19.30, which on a 50-ton car would be roughly 38 cents a ton. The effect of that is that the shipper is willing to sacrifice the coal beyond the price he would make if those charges were not accruing.

Cross-examination.

By Mr. Whitney:

Our mine in Kentucky concerning which I testified was not then unionized but I think the rates which I testified were paid by the competitor mine were lower than the general level paid at that time in Kentucky.

[fol. 509] (920) C. W. WATSON, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Critchlow:

My full name is C. W. Watson; residence, Fairmount, West Virginia; business address, Cincinnati, Ohio, and Fleming, Kentucky. I am 71. I started in the coal business about 1875 (921) in northern West Virginia. I opened the first mine I had any personal interest in in 1885. I became an executive officer of various coal companies in 1896. About 1902 I became president of the Consolidation Coal Company and was chairman of the board for 25 years. That company mined and shipped coal from the states of Maryland, West Virginia, Pennsylvania, Kentucky and Virginia. In 1911 or 1912 I became chairman of the board of Elkhorn Fuel Company. That company went into receivership in 1931. I was made receiver. The first of November of this

year I was made trustee under Section 77B. That company produced in 1934 about 1,500,000 tons from its own mines and about 1,250,000 from its lessees. I am also a director in other companies that lease land in Kentucky aggregating some 300,000 acres with a production between 3,000,000 and 4,000,000 tons. I have lived in West Virginia all my life. I was president or chairman of the board of Consolidation about 25 years. The annual production of that company varies every year. I think the highest year while I [fol. 510] was an officer its production was in the neighborhood of 17,000,000 tons. I was Senator from West Virginia for about three and a half years, filling an unexpired term.

(922) I am reasonably familiar with conditions at the mines in the various states I have referred to. To a reasonable extent I am familiar with market conditions and have been for many years, in the various consuming markets throughout the country. I am particularly familiar with production conditions in Kentucky. I concur in the view that there is a great deal of surplus capacity in the developed mines of the country and has been for many years. I agree with prior testimony that prior to 1923 the capacity of these producing mines to actually produce and ship was limited by the fact that the railroads were not adequately equipped to handle all the coal that could be produced. (923) It is true that about 1923 the railroads were in shape to handle the production of the mines generally. Throughout all the coal producing areas of the country there was very keen competition to get orders and sell coal. There was keen competition between the producers of every state and also between producing areas. For instance, the area south of the Ohio and Potomac Rivers was in competition with the producing areas north of those rivers. Within those producing areas there was unlimited competition among the operators. Several things happened during 1924, 1925 and 1926 to give very good work and fairly good prices to Kentucky and southern West Virginia. Those [fol. 511] were suspensions and certain fields going from union to non-union. (924) About 1925 wages began to be reduced all over the south, generally in Kentucky, and gradually receded in various mines until 1933, when they took an upturn. When I was appointed receiver, I believe our base wage rate at the mines was \$2.80 lower than other mines. The Jacksonville wage agreement went into the so-

called competitive states in 1924. About that same time, the so-called Baltimore agreement went into effect in northern West Virginia. At that time Kentucky was non-union. There was a gradual trend downward in wages in Kentucky up until 1933. I should say that that wage reduction gave competitive advantage to the southern fields over the northern fields compared with what they had had before that time. (925) The production from those fields increased during the period from 1924 to 1927.

Prices usually follow wages. Wages and prices were going down and production was going up in the southern fields from 1924 to 1927. At various times from 1925 to 1927 different fields in the north went non-union. From that time on, everybody was scrambling for a share in the markets where coal is principally bought and sold. Conditions in 1931 and 1932 were very bad. (926) So bad that the Governor of Kentucky called meetings of governors of other states in an effort to get the states together to exercise their police power to keep coal from being loaded at the mines. The working time was short and wages were extremely low. Practically all the companies [fol. 512] in eastern Kentucky were losing money. Living conditions were bad.

(927) In 1931, 1932 and 1933, prior to the NRA code the working time in Kentucky was not over an average of 3 or 4 days—3½ days, probably. The lowest wages I recall that the Elkhorn Company paid were \$2.80 base rate. There were no tangible results from the conferences I have referred to. I believe after that the Governor of West Virginia asked the National Coal Association to take the matter up and report a plan. After several weeks work they did report a plan which resulted in the formation of some selling agencies, the Appalachian being the most outstanding example. (928) The formation of the Appalachian Company was helpful in that territory. It made conditions substantially better, temporarily.

These conditions had a very bad effect on the financial condition of the coal companies. Many of them were in receivership. Under the National Industrial Recovery Act, for several months it had a very good effect. Better wages were paid and many companies under that code went from red to black. Now, prices have slipped very much. If we take into consideration the increase in wages

since 1933, the prices of screenings or slack coal, are about the same. (929) It is today being sold about as low as it was then. Appalachian Coals only operated a short time until the code came in. Operations were carried on under the code after that. Appalachian began operating in June, [fol. 513] 1933. The code came in the same year. I do not think the selling agency formed under the Appalachian plan would have brought the industry out of the condition it was in, and kept it out.

[fol. 514] (1157) C. W. WATSON, heretofore called as a witness on behalf of the defendants, was called as a witness on behalf of the plaintiff and testified as follows:

Direct examination.

(1158) By Mr. Whitney:

It was not the policy of the companies with which I have been associated, that is, the Consolidation Coal Company and the Elkhorn, at any time or to any degree to defraud their men of their wages in the absence of a checkweighman. (1159) We have had some cases where men employed by the company in charge of those things broke the policy of the company and did in fact defraud the men. I would say they were rare. What I would say concerning the districts concerning which I have previously testified in this respect would be hearsay. I have heard all kinds of stories. The general belief is that it did occur quite often. I have no proof of it. I do not think that it is the usual thing for the companies in my district to defraud the miners. Some of them do and some of them do not. Some were worse and probably some better than my companies. (1160) I do not think it was the usual custom.

The companies with which I have been connected never had any practice of evicting people from the company houses. So far as operators in my district generally, these evictions occurred generally in time of strike, which is war on both sides. I would say that otherwise they would very rarely occur.

[fol. 515] Cross-examination.

By Mr. Critchlow:

(1161) In the non-union areas, in the past, the operators did not exactly welcome union activities. It was warfare. Both sides are guilty.

When there was a character of man that was objectionable to the operators he was generally discharged and evicted.

Since the operators were fighting unionism, if they found out that there was a man among the employees who was talking union and holding meetings to interest the men in union activities he was generally dismissed. (1162) In reference to companies I was connected with I know of no eviction cases. I had none personally when I was superintendent of mines. I hear of cases in other companies quite often and see it in the newspapers and a lot of it was in evidence before investigations, but personally I have never seen a man thrown out.

[fol. 516] (930) E. C. MAHAN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Critchlow:

I live in Knoxville, Tennessee. I have lived there about 35 years. I am president of the Southern Coal & Coke Company, which is a selling organization, and also an executive officer in a number of operating companies, the total production of which is slightly under 2,000,000 tons a year. I have been engaged in the coal business 35 years, approximately. My activities are mainly directed toward the selling end. 16 mines are operated by the companies with which I am associated. They are located in eastern Kentucky and Tennessee. (931) I am reasonably familiar with the conditions in eastern Kentucky and Tennessee.

The coal produced from those mines is marketed in the areas ranging from Canada to Florida and not any further east than Ohio and not any farther west than the Dakotas. It is a section more or less shaped like an hour glass, run-

ning north and south. I try to keep familiar with the conditions of the markets in those areas where our coal is sold. In a general way, the market began to weaken, pretty substantially, as I recall, in 1923, due to the fact that for the first time since I had been in the coal business we had approximately a full car supply. Some time before the signing [fol. 517] of the so-called Jacksonville agreement by the central competitive field wages in the south had been reduced. Prices had been reduced. After the Jacksonville agreement had been signed by the northern people there was a continuous reduction of prices down south (932) and a reduction in wages and a substantial increase in the southern output, until it finally resulted in the central competitive field going on a non-union basis. Generally speaking, I think that was accomplished by the central competitive field in 1927. That was a result of the economic pressure exerted by the south in territories where they shipped coal. The competitive field had a \$7.50 a day base wage scale. Our wage scale was substantially less and was reduced from time to time as it became necessary. The net result was that the central competitive field was forced, practically in self-defense, to get themselves in a position where they could compete with us. In a very general way there was perhaps some profit made by the southern field during that period.

In 1926, as I recall, the English strike was a very substantial assistance to the southern fields—in fact all fields—and the effect of that lasted through a portion of 1927. But after 1927 the conditions became increasingly bad and kept getting worse and worse until the code was put into effect in 1933. Prices were reduced very substantially. (933) As prices were reduced, wages were reduced and conditions became so bad that it was practically a case of where an operator to get business would go and make almost any [fol. 518] price. Then he would go back and simply tell his labor the wage scale they would have to operate under in order for him to load that coal. Usually it reduced the wage scale about 10¢ and reduced the prices about 20¢. By 1933 we had a very distressing situation, very low wages and practically everybody in the business hanging on by their eyelashes. Working time was very poor, ranging in a great many cases as low as a day a week, probably averaging somewhere in the neighborhood of 2 to 3 days a week.

The experience under the NRA code was very satisfactory during at least the first year of its operation and resulted in great improvement in wages and improvement in the realization to the operators, and was of immense assistance in every way to the industry, in my opinion.

Cross-examination.

By Mr. Whitney:

(934) In 1932 we were forced to cut wages. That wage cutting prevailed all along from 1923 up to and including 1933. I felt at that time that it was very important to continue to cut wages all we pleased. I felt the government should not regulate the coal industry. I did not feel like I wanted to be regulated. (935) When I testified before the Senate Committee in May, 1932 that:

“There is no real reason that we can see why the coal industry should be singled out for regulation. It is probably in no worse condition than a number of other industries, and certainly is not in as bad shape as some. If a start is made in regulating the coal industry, it will likely [fol. 519] be only a question of time until lumber, steel, copper, and various other industries are also regulated, thereby abandoning entirely the principles of government on which this nation was founded and has been developed.”

I do not know just how far I would go in saying that I have changed my mind about those things, but, so far as this coal regulation is concerned, I am frank to say that I have changed my mind very substantially with reference to what I think is necessary in order for this industry to be able to conduct its affairs in anything like an orderly manner. I am considering only coal. I do not know enough about lumber, steel, copper and other industries to feel justified in expressing an opinion about them. (936) I was against the 1932 bill. We all do the best we can in saying what we think will defeat bills. At the same time we try to tell the truth, too. I have no objection to doing what I can to win this case. At the same time I want to tell the truth.

I do not want the domination of the United Mine Workers of America. I understand somewhere around 90% of the mine employees in this country are today represented by the United Mine Workers of America. (937) If there are

any of the 26 districts under the Act which have a majority of workers represented by some organization other than the United Mine Workers of America I do not know of them.

When I told the Congress in 1932 that:

“We believe it would mean the domination of the coal industry by the United Mine Workers of America to pass the Davis-Kelly bill, and we do not feel that the record of [fol. 520] the United Mine Workers of America in the past 20 years, in the matter of collective bargaining, as practiced by that organization, has been such as to justify this nation in legislating them into complete domination of the coal industry.”

I was saying it because I thought it was true. I thought it would be injurious to the nation to have the coal industry dominated by the United Mine Workers of America. I do not now feel about it as I did at that time. I do not relish the idea of having the United Mine Workers control this business (938) but I do not see any way for stabilization of this industry without it. By stabilization, I mean that if this industry is to be conducted in anything like an orderly manner, if a living wage is to be paid and some return gotten on capital invested in the industry, I do not see any way out of it at the present time except that wages be stabilized and I do not see any way at the present time to do that other than through the United Mine Workers.

I do not believe the condition of the industry is any worse now than it was in May, 1932, but I believe it is about as bad. (939) The average of all shipments my company gets for coal today is roughly \$1.80. The average we received in May, 1932, was roughly \$1.10. The average wages paid by us today to the miners, that is, the base rate in the so-called Appalachian region, is \$5.10. In May, 1932 there was no base rate, the average rate being paid was I would say roughly \$2.50.

(940) I hope that prices will be increased by the Act. [fol. 521] If they are that will result in an increased use of gas and hydro-electricity to a certain extent. I still feel as I did in 1932 when I said:

“Frankly speaking, personally, and not as a representative of the industry, if there was some way that I could

unload my troubles on the Federal Government, I would be more than delighted to do so."

(941) Redirect examination.

By Mr. Critchlow:

In the 35 years I have been in the coal business I have given pretty careful attention to the marketing end of the business. I have very definitely made a study, or tried to, of some solution of the industry's problems. I served during that period as president of the National Coal Association for two and a half years and subsequently as chairman of the subcommittee that considered all the plans that were suggested as a solution of the industry's problem. Out of that committee came the suggestion which subsequently was involved in Appalachian Coals, Incorporated. (942) I saw that tried out and, in my opinion, it was unworkable. After the NRA code was formed—frankly I was very much opposed to the code and went into it only because I had to, because I had been definitely opposed to any sort of governmental control in any way—but after the code went into operation and I saw the results and the possibilities of what could be done in the industry if it had a code with some enforcement in it, I became convinced that the industry could never get to a profitable operation [fol. 522] unless it had Federal control. I have seen state control tried to a certain extent. Some effort was made on the part of the governors to get together. After I saw the results of the first year of the operations of the code and saw how we had switched from the low living conditions of our miners to a greatly improved condition and I had seen red ink on our balance sheets switch to black ink in a great many cases, it was very evident that if some such program as the code could be continued and some enforcement put in there to make the code really operative, we had reached a solution of the industry's problems. That constituted the background that caused me to change. (943) Frankly, I think this bill we have at the present time is nothing more nor less than the code, with some teeth put into it for enforcement, and my opinion is that if it can be given a fair trial and the operators would give it the same sort of trial that they gave the NRA code, it would certainly go a very long way toward solving the problems of this industry.

Recross-examination.

By Mr. Whitney:

I think the tax provision is one of the teeth of the statute that were not in the NRA code.

[fol. 523] (950) W. P. TAMS, JR., a witness called and sworn on behalf of defendants, testified as follows:

Direct examination.

By Mr. Critchlow:

I live in Tams, West Virginia. I have lived there 27 years. I am in the business of producing and selling coal (951) and have been for 31 years in southern West Virginia Smokeless field, the specific district being Winding Gulf. The southern Smokeless field as a whole embraces the Carter Coal Company and our operations, both. The name of my company is the Gulf Smokeless Coal Company. I am president and have been for 24 years. Our usual production varies from between 700,000 and 1,100,000 tons annually. I am familiar with conditions existing in that field in connection with the mining and production of coal. Our coal is marketed in the same areas that the coal of smokeless fields generally is marketed. I am reasonably familiar with marketing conditions in the various markets in which that coal is marketed. I am not as completely familiar, however, as a salesman would be.

(952) In 1923 our section was extremely prosperous as the aftermath of the organized field strike in 1922 which had removed from the markets a large amount of coal, while our section, along with other non-union sections, were operating. That effect of the strike of 1922 continued over in 1923 and made 1923 a year in which a high price was obtained by everybody for coal. Starting in the fall of that [fol. 524] year, that condition changed, storage in the markets began to fill up and in 1924 we started into a very serious decline and our company lost money. In 1925 the anthracite fields went on strike and that brought us back to a temporary condition of prosperity, that strike lasting until the early spring of 1926. When that strike was set-

tled we again began to decline in price rapidly until the summer of 1926 when the British coal strike occurred and, our fields being close to tidewater, we supplied a great deal of coal to the British market. That had the effect of raising prices very materially. That strike was settled in January of 1927. In 1927 and thereafter our prices declined very steadily although they were helped out in 1927 somewhat by the efforts of certain northern fields to become non-union. Those efforts had gone on in 1925, 1926 and 1927. Our prices per ton for sizes such as slack used industrially (953) went down and we tried to meet the situation by installing screens in such mines as had not up to that time installed screens, so as to make the more remunerative sizes, such as lump and egg. Mines which already had screens increased the sizes that they made. That is to say, they began to make stove, nut and pea coal. All those efforts helped to stem the tide against us, and we were fairly successful but not completely so until 1930. After that the northern fields having become non-union and having reduced wage scales, we had to reduce our prices in order to operate, and after reducing prices we had to begin [fol. 525] to cut wages so as to make the costs equal to prices at which we sold coal. Once started, that continued in 1931 and 1932 until our final wage cut was made in early 1933, going in our district as I recall it to \$3.20 per day base rate, compared to a rate that had been \$4.64 per day, and which during the boom time of 1922 and 1923 had been \$7.68. That brought us down to the early summer of 1933, when the NIRA was passed.

I think that production somewhat increased in the smokeless coal field from 1923 until 1929-1930. The production went down until 1933, I think, and picked up somewhat in 1934. (954) In my opinion, the cause for this competitive condition forcing down prices and wages is too much productive capacity of the mines of the United States. There are several factors in the nature of the industry that have a tendency to cause that overproductive capacity to always be present. In the first place, coal mines are on leased property with the obligation on the operating company to pay a minimum annual rental or royalty, whether it produces coal or not. If the production is not kept up and if royalty payments stop, all of the plant and investment of the operating company is lost to it and becomes the prop-

erty of the land-owning company. In the second place, the coal industry has a very big percentage of its operating cost as labor cost, which makes it somewhat different from other sorts of businesses. You cannot pick up a coal mine from one spot and move it to another like you can in an investment in a mill where you can abandon the mill building only and move somewhere else. You cannot pick your coal mine up and move it to a more favorable market. In the Appalachian section generally when you open a mine you have to build a town, because the mine is opened in communities that have no towns and no villages, no place for the working people to live. The mining operation has to build that town.

There is a cost in keeping a mine idle. If you expect again to operate the mine you have to keep up the equipment, you have to keep the mine pumped out as to water, and you must maintain your town, you must furnish heat, light and water, you must police the town, you must collect garbage and trash and carry it away, all the expenses of a small community; and you must pay the royalty to the landlord if the mine is on leased property, and your taxes go right along. If a mining plant located on leased property is taken by the owner of the property upon default in royalty that does not mean that the mine then is out of the market. Some other optimist comes along and leases the property and starts to work operating it. He gets the plant on the property without expense—with a reduced capital expenditure. If such a mine is taken over by the mortgagee there is the same incentive to use the land for the only purpose for which it can be used, to try to make something out of the coal that is in the ground, and to put the coal on the market. (956) We have a mine in our particular district that I think has been operated in the last 15 years by five different companies, each of which has gone into successive bankruptcy.

[fol. 527] The coal produced in our district we call smokeless coal. That is low volatile coal. That coal is particularly competitive with central Pennsylvania which is a similar coal. Its prepared sizes to a limited extent compete with anthracite coal. The coal competes with all the other coal-producing districts east of the Mississippi River generally speaking.

(957) From October 1, 1933, until the end of 1934 under the NRA code in the smokeless field, we had an immediate improvement in the price obtained for coal and in the wages paid to the men. That improvement remained until December, 1934. At that time, many shippers became doubtful of the Government's ability or willingness to enforce the code and it became believed in the smokeless coal fields that certain operators were so sure of their belief that they would not be successfully prosecuted that they began to sell at prices below code prices. From that time on, the code effect dropped and we ceased to get the benefits until at the decision in May in the Schechter case, the whole thing collapsed so far as price regulation went. Since that time the price of slack coal particularly has very materially declined below the prices fixed by the code. I should say they declined anywhere from 30¢ to 60¢ per ton depending upon how eager the operator who was selling was for full-time running. The cost increases very materially on part-time running. I think I recall that our company had a difference in cost between December and January of 32¢ per ton due to a tonnage change from 46,000 tons produced in one month to 69,000 tons produced in the other month. (958) [fol. 528] The average running time of the mines in our area in the early part of 1933 was probably 60%. I would not state that as an accurate fact but that is my impression.

Cross-examination.

By Mr. Whitney:

I think the average running time in August of 1935 in my district was probably 70%, approximately. There was an excessive productive capacity present in 1932. (959) I do not think we are losing as much business at the present time to other fuels as we were in 1932. That is not because prices are lower. I think people fixing to go to competing fuels since that time have largely gone to them. In other words, the opportunity to change has partly exhausted itself.

Operation at my mine has not been interrupted as a result of maintaining a non-union policy. In 1922 one out of four of my mines was laid up for ten days because of threats of violence made by men representing themselves as agents of the United Mine Workers of America. We

called the sheriff of the county to deputize an officer to police that particular job and protect the men. (960) That enabled production to be reopened and commerce again to flow. It might possibly have been also due to the obtaining at the same time of an injunction. I think the injunction came shortly after that. I do not remember the exact time.

When I testified in 1932 that:

[fol. 529] "It seems to us that while conditions are admittedly unsatisfactory in the coal business, yet compared to other businesses it can be said to be in better shape than steel, automobile plants, and other industries, which no one has yet proposed to regulate."

I meant regulation by the National Government. Today I believe regulation by the National Government is the only practical means to get out of our present difficulties. (961) Today I would be prepared in order to get out of our present difficulties to submit to "a bureaucracy compared to which the Interstate Commerce Commission would be a child alongside a giant" but in 1932 I was not. Conditions then were different. It is true as I said then that

"Each individual coal mine is a problem in itself, with conditions varying materially from mines immediately adjacent thereto."

I thought then that this meant that:

"There are over 7,000 mines in the United States, and it would require literally hundreds of commissioners and thousands of subordinate employees to even accumulate the data on which to base decisions by the proposed commission."

but the NRA experience would seem to indicate it can be done with much less. The NRA worked as long as the people subject to it thought it was a constitutional law and that it could and would be enforced. When they ceased to believe that it ceased to work. I should say that from 10% to 20% in our section began to doubt it in December of 1934 and naturally 100% knew it was not constitutional in May, 1935. (962) The proportion of from 10% to 20% seemed to be sufficient to undermine the code in our district.

[fol. 530] (966) Redirect examination.

By Mr. Critchlow:

The injunction suit I previously mentioned in connection with some strike activities at one of our mines was in 1922 in a Federal Court. I think jurisdiction was based upon the fact that the mines in that section had individual contracts with the miners, and the court was asked to enjoin the United Mine Workers from interfering with those individual contracts.

(967) Recross-examination.

By Mr. Whitney:

The 1922 strike in the Winding Gulf subdistrict of the smokeless field, in one sore spot, lasted about ten days. In the New River section of the smokeless field it lasted considerably longer, but I do not remember exactly how long. The aggregate amount of days that the Tug River district has had strikes since 1923 would be negligible. New River has had more suspensions. It was organized in 1913 and remained organized until 1922, and as I recollect, it went non-union in the strike of 1922. My guess would be that the New River district has been tied up by strikes since 1923 altogether six weeks to two months. (968) The Pocahontas district has not been tied up by strikes at all since 1923, until the last strike of one week, pending this final settlement. With the exception of those five or six mines immediately around a little town called Sophia, which were suspended about 10 days in 1922, I do not think the Winding Gulf district had any strikes.

[fol. 532] W. A. RICHARDS, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Critchlow:

(969) I am in the business of mining and selling bituminous coal. My operations are in district No. 7, which is the

Smokeless area of southern West Virginia and in the Williamson district which is in district No. 8. I came to the southern fields in November of 1924 as general manager of the Ashland Coal & Coke Company with mines in the Pocahontas field, district No. 7, and as general manager of the Pemberton Coal & Coke Company, with mines in the Winding Gulf district, in district No. 7, and as general manager of the mines of the Majestic Collieries Company in eastern Kentucky, in the Williamson field, district No. 8. In 1925 I became president of those companies. In 1931, with my father, I helped organize the Sovereign Pocahontas Company, which is a selling company for the output of those mines and the other mines in the Pocahontas, Winding Gulf and New River districts of the Smokeless field of West Virginia, or district No. 7 in the Act, and for other mines in the Virginia district and the Williamson district, which is in district No. 8 in the Act. I was a member of the code authority, chairman of the classification committee of that code authority, and (970) executive secretary of that code authority in charge of correlation of prices with other sub-[fol. 533] divisions, under the NRA. I was a member and chairman of what was successively known as the Joint Market Committee of Division No. I which embraced districts No. 1 to No. 8 under this Act and which committee was later known as the Market Subcommittee of the Administrative Advisory Committee, which embraced all divisions of the bituminous industry, which was changed in January to be the divisional market committee of division No. 1.

My activities have been directed to both production and sale. I am president of the Sovereign Pocahontas Company also. (971) The period since 1924 has been characterized by a decline in price, with the single exception of the effect on the mine realization in the Smokeless area produced by the continuous effect of the anthracite strike from September, 1925, to February, 1926, and then the Britian strike from about May 1, 1926 to November of 1926, and a threatened suspension in the central competitive field in 1927 which, over that period, gave us an artificial market. (972) During this period the trend in shipments was upward. Generally, the margins of profits of the producers were declining. Coal from that area is known as low-volatile coal. It is coal running from 15% in volatile content to

approximately 26% (973) and makes less smoke in combustion than does the general run of high-volatile coal. It has a little more volatile content than anthracite coal has and the three broad descriptions of coals are, therefore, based on that volatile content, anthracite being the lowest, [fol. 534] Smokeless coal coming next, and high volatile coal ranging from 28 on up to 40%. In general low volatile coal commands a higher price in the markets of the country than high volatile coal with the exception of a few specific and small instances. By "small" I mean in tonnage. While markets were expanding and we had a coal of superior quality, margins of profits were declining because of the declining realizations for coal that it was possible to secure in the country. Naturally, the prices of Smokeless coal must be influenced by the market prices prevailing for equivalent grades of coal in the various consuming markets. To that extent it is affected by the competition of all fuels. In addition to that, it, like other producing districts, does not have what I would term a fair market. By a fair market I mean a market in which a willing seller meets a willing buyer (974) without advantage on either side. The nature of the industry, with its high inherent shutdown cost, the fact that a producer must supply coal to maintain his identity in the market, his reputation for being a dependable source of supply, and the fact that costs decrease in proportion to tonnage output, all contribute to make the market unfair.

Our decline in margin of profit had proceeded to a point where it became a matter of concern to the operators in the Smokeless district in the year 1924. At that time, the operators studied plans for merging their properties into larger corporate entities. They studied plans and put into [fol. 535] effect an open price filing bureau known as the Stover Smokeless Coal Bureau. They studied plans for the creation of a central selling agency. Mr. John L. Steinbugler, who is president of William C. Atwater & Company of New York City, in 1925 (975) advanced the plan of the central sales agency for the first time, and it was considered at length by the Smokeless producers. On advice of counsel that such an agency was illegal, the plan was abandoned, and in 1927 the producers took under consideration the creation of a merger of operating companies in all the Smokeless fields, and spent nearly a year in trying to effect

such a merger. In 1929 the Smokeless Coal Operators Association appointed a policy committee of one representative from each of the three major districts, Pocahontas, Winding Gulf and New River, to study the flow of Smokeless coals in the various markets, (976) and to aid in finding those factors that were detrimental to our progress, and in December 1931, the Smokeless producers joined with the producers generally all over the country in resurrecting Mr. Steinbugler's plan for a central selling agency, and, in common with other districts, set up committees to try and work out such plans and put them in effect. The Smokeless committee, of which I was a member, worked for three months in 1932 on such a plan, and was stopped by the test suit on the part of the Government on a similar plan in the Appalachian fields. When the Supreme Court, in March, 1933, held such a plan legal, the Smokeless committee again [fol. 536] went to work on such a plan and had arrived at a point where it felt it practical to try and organize, when the National Industrial Recovery Act was passed.

(977) [It was stipulated by Mr. Critchlow and Mr. Whitney that Mr. Richards would testify in substance the same thing Mr. Tams testified to in answer to the question "what was the condition of the industry down there in the Smokeless fields in 1932 and 1933?"]

I heard Mr. Carter's testimony about the Caretta mine where he claimed there was a discrimination under the code in the price fixed for that mine. (978) Mr. Carter voted for that price.

[fol. 537] (1143) W. A. RICHARDS, a witness heretofore called on behalf of defendants, was recalled and testified further as follows:

Redirect examination.

By Mr. Critchlow:

Anthracite is produced almost entirely in Pennsylvania. It has a very low volatile content, 6% to 7%, and is very hard as compared with either high or low volatile bituminous coal. Its name in the trade is hard coal. It is somewhat higher in ash than the average high volatile bituminous coal and is distinctly higher in ash than the aver-

age low volatile bituminous coal. It is distributed chiefly in Pennsylvania, New Jersey and New York and has secondary markets in New England, parts of Canada, the central West, Maryland and the District of Columbia. Very little is distributed further south than the District of Columbia.

I was born and brought up in the anthracite region, (1144) Wilkes-Barre and Pottsville, Pennsylvania. My father was president of the Philadelphia and Reading Coal and Iron Company, the largest operating company at that time. I entered the coal industry permanently in 1919 as an engineer on the Minersville engineering corps of that corporation and was engaged as assistant to the chief engineer and as assistant to my father from 1919 to 1924, when I came south.

There is a difference in the conditions in which anthracite coal deposits are found and those in which bituminous coal deposits are found. The anthracite coal measures have been greatly disturbed by the regional metamorphism that produced anthracite coal, in which the original beds were devolatilized by this structural upheaval in those fields, so that they lie to a much greater extent in separate pitching veins, whereas bituminous coal lies in fairly horizontal strata.

Anthracite coal is very largely domestic fuel. It averages 60 or more per cent of domestic sizes, above the sizes of pea, and 40% or less of the so-called steam or fine sizes. Prices for anthracite coal range about \$7 for the stove and chestnut grades at the mine, about \$5 for the pea size from \$3 to \$3.25 for what is known as buckwheat No. 1, from \$2 to \$2.25 for buckwheat No. 2 or what is known as rice, and about \$1.50 for barley or buckwheat No. 3. (1145) Prices for smokeless prepared coals range from \$3.25 to \$3.50 a ton in the case of the very large sizes, lump and egg, which are no longer produced in the anthracite field to any extent, to \$2.25 to \$2.75 for the nut and stove sizes, which compare somewhat in general size to anthracite, chestnut, stone and egg sizes. Prices for low volatile screenings from about \$1.25 to about \$1.35 a ton at the present time. Generally speaking, these smokeless coals are of the highest grades of bituminous coal. There are some exceptions for certain specific purposes.

There are certain markets in the country in which smokeless coals of southern West Virginia, for example, have [fol. 539] no freight rates or have to take the combination of local rates which would make their delivery price considerably above the equivalent of anthracite value. There are also certain sections that have used anthracite for generations and prefer it because of its greater cleanliness and less degradation. In a great many communities the chimneys in the houses have been designed to burn anthracite coal (1146) and do not have enough air to use either low volatile or high volatile coals without making objectionable smoke. There are smoke ordinances in a great many large consuming centers.

The heat value of anthracite coal is less per pound than for smokeless coal, and slightly less than the general average of high volatile coal.

I do not think there would be a substantial shift to the use of anthracite if bituminous prices were raised 20¢ to 30¢ a ton, because competition with anthracite is on a delivered price basis in the various markets of the country and that advance would be greatly lessened in a comparison of the delivered values of the coal by reason of other charges that enter into the making of the delivered prices. There are a great many areas in which (1147) the competition of anthracite coal and of bituminous coal is not as acute as in other areas.

Generally speaking, the fact that the price of industrial coal is lower than that for domestic coal is not because of any difference in the quality or heat value of the larger [fol. 540] sizes as compared with the slack. The chief reason for the difference is that domestic coal is purchased by some 5,000,000 to 6,000,000 consumers while industrial coals are purchased by a tremendously smaller number of large purchasers and the difference reflects the purchasing power of those large consumers. Also the seasonal nature of domestic coal sales brought about by the habits of the buyers, that is, the desire of the domestic consumer to secure his coal just as late as possible in the season, tends to make domestic prices higher than if those consumers would take their coal evenly over the year. The smaller or slack sizes are better for steam uses than the larger sizes.

The difference between domestic sizes and industrial (1148) sizes before the NRA code was adopted, for the

month of August, 1933, was \$1.16 a ton. Under the code in August, 1934, the difference was 94¢ a ton.

It is no more difficult to sell domestic coal at the average market price then prevailing than it is to sell fine or industrial coal at the market price then prevailing. From a strictly cost selling standpoint, it costs more to sell prepared coal because it is sold in considerably smaller lots. That is generally true of the industry. There are exceptions to the rule on the part of those producers who may have either a premium prepared coal or a premium slack coal, but those exceptions prove the general rule.

The following statement and answer were made by Mr. Critchlow and Mr. Whitney:

(1154) Mr. Critchlow: Our contention is that the coal is mined to fill orders, that the mine is not run unless there are orders. Now, in the preparation of the coal which is mined to fill orders already on hand, there necessarily comes into the production certain sizes which are not necessary to fill those orders, and it is those sizes only that may be said to be unsold coal. Do you differ from that statement, Mr. Whitney?

Mr. Whitney: No, not if you say it is the general rule. It is not the universal rule but is the general rule.

(1151) Low volatile coal is produced in Pennsylvania, Oklahoma and Arkansas, in addition to the smokeless fields. [fol. 541] This coal generally speaking is similar and is of higher quality than high volatile coal but not for all purposes. There are certain grades of high volatile coal that are superior to smokeless coal for certain purposes, as for instance, by-product application. There are coals, such as the eagle seam coal, which tend to reduce the coking time of ovens and have for years commanded a higher price than smokeless coals for that purpose. There are certain premium splint high volatile coals which are preferred in certain rural sections of the country because there is not the degradation there is in smokeless coal, and smoke is not an important item.

By the Court:

By degradation is meant the breakage of the larger pieces of coal down to smaller pieces.

(1152) By Mr. Critchlow:

Low volatile coal is superior to high volatile coal for those applications where the emission of smoke is important. In a number of western and eastern cities there are ordinances affecting the applications of coal in certain restricted areas. Low volatile coals are generally higher grade steam coals than high volatile coals.

[fol. 542] W. A. RICHARDS, heretofore called as a witness on behalf of the defendants, was called as a witness on behalf of the plaintiff and testified as follows:

Direct examination.

By Mr. Whitney:

Referring to the companies with which I personally have been associated, it certainly was not customary or usual, in the absence of a checkweighman, to defraud the miners of from 10% to 50% of their just earnings. I was a member of the executive committee, and president of the Winding Gulf Operators Association. (1163) I have been a member of the executive committee of the Pocahontas Operators Association and a member of the executive committee and president of the Operators Association of the Williamson field, and it was not usual or customary to defraud the men in those districts.

It was not usual or customary for my company, when a man had resigned or been discharged from employment, thereupon immediately to evict him from his house. I think it is generally true of the district that when a man is discharged or resigns he is not immediately evicted.

Cross-examination.

By Mr. Critchlow:

I have been in that field since November, 1924. I came south years after the Mingo County trouble. (1164) It is true that the operators in that field were opposed to [fol. 543] unionization. The practice has been about the same, both non-union and under the union, in respect of keeping on the payroll employees of objectionable character.

By the Court:

An objectionable employee for a number of different reasons was given proper notice and asked to vacate his house but in no case that I have any knowledge of was any immediate ejection of that man made. He would move out, possibly in two weeks' to a month's time.

By Mr. Critchlow:

There was an injunction in force down there restraining union activities when I went south up until the Norris anti-injunction act. (1165) Union and non-union activities were hotter before I went down there than after I had been there. The injunction covered the whole area to the best of my knowledge and belief.

[fol. 544] (979) PHILIP MURRAY, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Lewin:

My name is Philip Murray. I am the international vice-president of the United Mine Workers of America. I have been associated with the coal mining industry for a period of 38 years, 22 years of the time being as vice-president of the United Mine Workers of America. It has been my duty to keep informed as to conditions in the coal mining industry throughout the United States and in particular the conditions in connection with the labor employed in the coal mines. The mine workers of the nation are associated into a national organization because of the competitive relationships that exist between wages and costs in the various producing districts of the country. (980) We attempt to have a widespread national organization to maintain, through the processes of collective bargaining, a degree of uniformity with respect to wage relationships. It is not only necessary to the welfare of the mine workers that that sort of wage relationship be maintained in the bituminous mining industry, but it is very necessary to the welfare of the industry generally.

(981) The effect of a variation in wage standards throughout the mining industry creates chaos in marketing [fol. 545] and competition among producers. (982) It is necessary to have collective bargaining on an industry-wide basis in order to have it effective. Our experience in dealing with the problem of wage making since 1890 makes it quite obvious that it is necessary for a form of collective bargaining to be maintained in the industry. The history of the industry, as far as I have gone into it, dating back to 1871, indicates that every attempt that has been made to establish wages has been one that has given consideration to the interstate relationship of (983) wages in each state to each other and the labor cost of production and its relationship to the total cost of production in all the producing districts throughout the country.

(988) Our experience in the field of collective bargaining demonstrates that we cannot successfully maintain collective bargaining over a long period of time so long as the collective bargaining is predicated upon a local district or small group of districts. The bargain then has no relation to other districts that have not participated in the wage-making. The history of collective bargaining in the bituminous coal industry before the war is based upon an interstate arrangement or agreement perfected from year to year between the producers of the states of Illinois, Indiana, Ohio and western Pennsylvania, and the representatives of the United Mine Workers of America from the four district organizations in the same territories. The [fol. 546] basis (989) upon which these agreements were arrived at was usually predicated upon the fact that whatever agreement as to wages and hours was finally arrived at for the four states comprising the central competitive field, that would finally be applied to all unionized districts not parties to the central competitive field conference. Those other districts were central Pennsylvania, Maryland, the organized portions of West Virginia and Kentucky, the states of Iowa, Missouri, Arkansas, Oklahoma, and Texas, Montana, Colorado, Wyoming and the state of Washington. (990) Agreements were made in those outlying districts by collective bargaining, and then coordinated to the basic agreement arrived at in the central competitive field.

Each scale-making area, or at least the International Convention of the United Mine Workers of America, was

usually convened in the City of Indianapolis prior to the meeting of the central competitive field wage scale conference. At this convention of the United Mine Workers of America a national wage policy was enunciated, and the officers of the United Mine Workers of America instructed by the convention of delegates to put into effect in all outlying districts, not parties to the central competitive wage scale conference, the terms and provisions and conditions usually attained or accomplished in the central competitive field conference. While our central competitive wage scale conferences were under way, the custom had been to assemble our wage-scale committees, miners and operators [fol. 547] from all outlying districts to sit in the city where the central competitive wage scale conference was being had, to offer advice, give counsel, and make such suggestions as might be helpful to that conference in arriving at its conclusion; so that no one in the unionized portions of the industry at least might have the impression that there was any desire upon the part of the central competitive field to (991) impose an unjust situation upon any mining district in any part of the country. The workers in the outlying unionized fields were always consulted first.

I am familiar with conditions with respect to the strike in 1919 and its injunction by some of the courts as a violation of the Lever Act. The strike itself lasted for a period of about six weeks from the beginning of October until about the middle of November. It occasioned a rather serious shortage of coal, the result or effect of which was—unusual rise in prices, occasioned naturally by national stoppage. (992) After the issuance of the court order restraining the strike, the mine workers ordered all men to return to work and a commission was appointed by the President of the United States which rendered a decision officially granting a 14% wage increase, in 1920.

The strike of 1922 was occasioned by the refusal of a large number of substantial producers of coal in the central competitive field to participate in our wage conference. Our contracts automatically expired March 31, 1922, and having made no wage agreement to supplant the one which had expired (933) a suspension of mining took place April [fol. 548] 1, 1922, which lasted until about the middle of August, 1922. That strike affected 70% of our national production of coal for a period of approximately four and

a half months. 30% of the production, emanating from what were then called non-union mines, continued to be sold and mined during a portion of that strike. The result of the 1922 strike could be likened to the result of the 1919 strike, the only difference being that the 1922 strike caused a very serious national shortage of coal, the non-union mines being unable to supply or to meet the needs of the nation. The effect was an unusual boost in the price of coal all over the country, minimum prices on contract coal being about \$3.75 and ranging from there to a peak of about \$20 a ton for spot coal.

(995) The strike continued from April 1 until August 16 or 19, 1922. Then there was an immediate resumption of operations, a settlement being made in Cleveland during August. There was a tremendous stepping up of production, and before any change took place in the price structure of coal some 400,000,000 tons of bituminous coal had been mined and marketed at those unusually high and very exorbitant prices. (997) Some of the prices went to a peak of \$20 a ton for some spot coal. (998) The average price of coal went to extraordinary heights.

With the exception of the Kanawha field, the Paint Creek and Cabin Creek sections and the Big and Little Coal Creek sections, which were high volatile fields, we had no organization in southern West Virginia during the course of the 1922 strike. (999) There were no labor organizations in the unorganized territories of southern West Virginia during that period. Generally employees in the mines south of the Ohio River, with the exceptions I have named, were not permitted the right of collective bargaining with their employers through their representatives. (1000) The typical contract that prevailed in the unorganized fields of southern West Virginia during that period was the individual or the yellow dog contract that prohibited the individual from joining a labor organization of any kind or description while in the employ of the company. (1001) The causes that led up to the absence of collective bargaining in the south and the prevalence of the yellow dog contract were the colonization of mine labor in isolated mining communities, the compulsion on the part of a mining company that employees must live in company houses before they get employment, the restrictions that were placed upon employees by coal corporations in re-

fusing employees under any and all circumstances to freely assemble for the purpose of discussing questions affecting the organization of themselves into labor (1002) unions, or for any other purpose that might have had to do with either their civic or their social betterment. (1003) When I refer to the isolation of miners in the mining colonies, I mean that mining communities are usually built in places that are not close to either industrial centers of population or [fol. 550] any other kind of centers of population. They are separate and apart. They are away from everything that has to do with other than coal mining. The only industry around such a community is the coal mining industry, the coal mine itself, the coal plant, the company houses, the company store, the company office, and that usually is a coal mining colony. In that respect I think the southern mines at that time were different from the northern mines, speaking generally. Most every one of the coal mines was built close to centers of population in the north.

(1004) What I mean by the term collective bargaining is something similar to the sort of collective bargaining institution that we have in the mining industry. We have great associations of coal operators in every coal producing district of the country. These coal operators' associations elect from within their associations wage scale committees of the districts. They designate those men to represent them in these collective bargaining negotiations. The United Mine Workers of America, on the other hand, have 28 separate district organizations. They meet in their district conventions. They select their district wage scale committees. (1005) These mine workers scale committees are authorized by the mine workers, in convention assembled, to represent the mine workers' interests in a joint wage scale meeting for the purpose of working out a collective agreement affecting wages and conditions of employment. That is what collective bargaining means to miners and operators in the coal industry. That is the history and practice of mine workers and coal operators wherever collective bargaining is resorted to. In order to have collective bargaining it is not necessary for there to be any [fol. 551] particular labor union. There are other unions that collectively bargain on questions of wages, hours and conditions of employment besides the United Mine Workers of America. I was just giving the collective bargaining

of the United Mine Workers of America as an illustration of collective bargaining generally. It is fair to say that collective bargaining is a bargaining between representatives, for instance, of a group of labor on the one hand, and a group of operators on the other.

(1006) The absence of collective bargaining has always caused strikes. It has caused strikes in coal fields where (1007) there was no collective bargaining, and it has precipitated strikes in districts where collective bargaining existed. A constant effort has been made by the United Mine Workers of America throughout the years to extend the principle of collective bargaining into all the unorganized fields of this nation—unorganized coal fields. Those efforts were resisted by the employers. I cannot recall any material degree of success that attended our efforts in organizing the unorganized mine workers of the south prior to the enactment of the National Industrial Recovery Act. The United Mine Workers of America specifically made such efforts. (1009) The reason the United Mine Workers of America were anxious to extend the principle of collective bargaining to those territories was in order to improve their conditions of life, to furnish them a better outlook, to improve their standards, (1010) to furnish them [fol. 552] an opportunity to secure through the process of collective bargaining a better wage, better conditions of employment, to free them from the influence of company-owned towns, to free them from the straight-jacket influences of the yellow dog contract. It also had an interest in the influence that it would have upon collective bargaining where already established. The unorganized sections of the south where no collective bargaining prevailed, constantly placed in jeopardy the collective bargaining settlements in the coal mining districts of the north by threatening the maintenance of the wage structure that had been set up in the north. (1011) The lower wages and longer hours in the south and the absence of collective bargaining there influenced conditions in the north because of the competitive relationships that existed between those producing districts in view of their coals entering substantially the same markets. The fact that the southern coals were mined at a lower cost took the markets of the north away, creating unemployment in the north, caused abrogation of wage agreements on the part of large coal companies, precipitated

strikes of state-wide areas, and in many states caused evictions, bloodshed, riots and disturbances. The absence of collective bargaining in the unorganized districts south of the Ohio River materially affected the price situation in the states north of the Ohio River.

(1012) In 1922, when the great strike in the unionized [fol. 553] fields took place affecting about 70% of the National coal production, that was caused by the unionized operators' refusal to make any wage agreements. The excuse which they offered was that they could not hope to maintain the wage structure and could not hope to maintain their markets so long as southern coals were being mined at costs and sold at prices substantially lower. They therefore insisted as early as 1922 as a condition upon which a conference might be convened that they must accept an arrangement that would provide for a continuous competitive wage scale with states south of the Ohio River. The organized mine workers would not subscribe to that proposition and a strike ensued. In anticipation of the strike there, approximately 75,000,000 or 80,000,000 tons of coal were stored above ground. (1013) In the early part of 1924 the so-called Jacksonville agreement was arrived at between northern producers and the United Mine Workers of America. That agreement terminated in March 31, 1927. Following the 1922 strike there was a decided shift in production from states north of the Ohio River to states south of the Ohio River. That condition continued until about 1929 or 1930. The shift of production had its effect upon the whole competitive structure in the Appalachian area. It proved disastrous to many mining corporations in states north of the Ohio River and was fairly successful for a period of two years to producers south of the Ohio River. Causes which might be attributed to the conflict which took place in 1927 I believe commenced in June of 1925.

[fol. 554] (1014) About the time of the expiration of the Jacksonville agreement, March of 1927, another attempt was made by the mine workers and operators to negotiate a contract. We had a meeting in February, 1927, in Miami, Florida. The Jacksonville agreement was signed by practically all of the substantial producers north of the Ohio River. The north West Virginia district was a party. The Kanawha field of West Virginia originally participated in the conference and became a party to the agreement, but

in June, 1925, broke away contending that its competition from the Logan and Williamson fields of West Virginia was so severe that it could not hope to maintain its agreement, and would be compelled either to abrogate the contract itself or secure through other means an agreement with the mine workers that would bring their wages down to a wage similar to that in the Williamson and Logan fields. The Kanawha field eventually broke away. It was later followed in the summer of 1925 by the Consolidation Coal Company abrogating its contract in the northern field of West Virginia. The Buffalo, Rochester and Pittsburgh Coal and Iron Company, in central Pennsylvania then abrogated its agreement in the latter part of 1925. At about the same time, the Pittsburgh Coal Company, which was the largest single producer of commercial coal in the United States at that time, abrogated its contract. The organization of mine workers was engaged in the conduct of a guerilla war with many very substantial producers who had abrogated their contracts during 1925. In each instance, wherever the abrogation took place the poster at the mines advising employees that wages were about to be reduced was usually accompanied by the statement that the producer was compelled to reduce wages because of inability to compete with people [fol. 555] producing and selling coal in the same markets. The condition of major producers breaking away from the organization continued. It entailed a great deal of sacrifice on the part of the employees and their wives and children in the states of West Virginia, Ohio and Pennsylvania. The mine workers resisted the effort of the employers to abrogate their agreements. A large force of private policemen were employed by the large companies. (1016) A notable instance is to be found in the Congressional Record of 1925 with reference to the investigation by a Senate Committee. The record shows that there were 5,200 private policemen employed by corporations in the state of Pennsylvania in an attempt to destroy the organization of the United Mine Workers during that period; that injunctions were issued, State and Federal, to restrain the members of the United Mine Workers of America from engaging in strikes or picketing at mines in the central Pennsylvania district. The most notable injunction issued during that strike was the one issued by the judge in Indiana County in central Pennsylvania which prohibited striking mine workers from

holding meetings of any description, although their meetings were being held for the purpose of trying to maintain their contract standards. That condition of guerilla warfare continued until the legal expiration of the contract on March 31, 1927.

(1017) During that period there were very serious interruptions in the operation of the mines, including mines [fol. 556] engaged in the sale of coal in interstate commerce. I cannot state the exact amount, but the production ran I suppose into several million tons. The territory covered the states of Ohio, Pennsylvania, northern West Virginia and a portion of southern West Virginia. The strikes and interruptions in northern West Virginia were accompanied by riots and disturbances. By guerilla warfare I mean that the special policemen and our mine workers were engaged in actual physical combat. We had no martial law in the State of Pennsylvania but I believe we had sheriff proclamations prohibiting the assembling of two or more persons in given communities during the period of these disturbances.

(1018) In February, 1927, the operators and mine workers of the central competitive field met in Miami. Mr. Haskins of Ohio, the spokesman for the operators in that conference, presented a resolution, a copy of which I have here. (1019) This was the wage proposal that was submitted to this conference by the operators.

(1020) [The proposal submitted by Mr. Haskins at Miami in February of 1927 was then offered and received in evidence as Plaintiff's Exhibit No. 62.]

This wage proposal of the operators was not accepted by the workers. There was no wage agreement consummated at that time. The strike of 1927 followed.

(1025) When the Miami conference convened February 14, 1927, Mr. Haskins, in behalf of the coal operators participating in the meeting, presented the resolution marked Plaintiff's Exhibit No. 62. It was the only proposal offered the mine workers and suggested that the wage scale to be negotiated commencing April 1, 1927, must be continuously competitive with the wages and conditions prevailing in West Virginia and Kentucky (then substantially unorganized); that a commission of four men be created to be composed of two miners and two opera-

tors, buttressed by three mediators to be selected by the Chief Justice of the United States Supreme Court in event the parties should be unable to agree upon the selection of the mediators; that it should be the duty of this commission to determine a competitive wage scale for the central competitive field; (1026) the operators insisted that the mediators and the commission visit the mines and operations in the unorganized territories and ascertain the actual wages being paid non-union miners and the actual conditions of their employment; that when the commission should arrive at a determination as to the actual wage in the non-union territories it should write into the central competitive field wage scale a wage that would be truly competitive with such non-union wage; that the commission should continue to function thereafter and proceed to readjust from time to time the wage scale in the central competitive field in order to maintain competitive conditions between that field and the non-union territories; that the commission should have final jurisdiction in all grievances appealed to it from the various districts. (1027) The mine [fol. 558] workers refused to accept this proposal, because it would have destroyed completely the principle of collective bargaining and would create a wage making situation for the unionized areas that would tie wages and hours and conditions of employment of union miners, to the wages, hours and conditions of non-union workers. This proposal resulted in the breaking up of the meeting and precipitated the strike which spread through the territory of Pennsylvania, Ohio, Indiana, Illinois and certain unionized sections of West Virginia, particularly northern West Virginia. This was the so-called strike of 1927. There were in the neighborhood of 250,000 men involved. The strike continued in western Pennsylvania and Ohio districts, at most of the properties, until some time during 1928. A settlement was effected in Illinois and Indiana, continuing the old wage arrangement until March 31, 1928.

(1028) The effect of the strike in the northern mines was an interruption of production at a very substantial portion of those mines. The actual amount of tonnage lost to northern producers I do not know, but it was considerable. There was a drifting of the lost tonnage from the mines closed down in the north to the non-union operations south of the Ohio River. The economic forces of the strike were

sufficient to destroy the organization of the United Mine Workers of America in the states of Ohio and Pennsylvania and in the northern West Virginia district, and all of those territories went completely non-union. With the destruction of the union there came about the full and [fol. 559] free play of cutthroat competition in all those territories resulting in continuous wage cuts, degradation of living standards, degrading of prices and pauperization of mine workers.

(1029) There was no collective bargaining in the states of Ohio, western Pennsylvania, West Virginia or Kentucky from the beginning of the 1927 strike until the fall of 1933. The basic wage at a number of the so-called high cost and uneconomic properties in the north dropped to a figure of about \$1.50 a day. There was no regulation as to hours. The large and more substantial producers paid a wage of \$3 a day until about the spring of 1933. Reports were submitted to my office by field agents which showed that the wage level in some instances in the Logan and Williamson fields in the southern territories dropped to as low as \$1 a day. (1030) The hours of employment went from 8 to 10 and 12 and 14 hours a day. The record of the mining industry during that period showed that the average operating time in all the mining districts throughout the country was from three to three and a half days per week.

There were deductions from weekly income resulting from the day wage multiplied by the number of days an employee could work. There were normal deductions incident to coal mining. The miner who loads coal has to purchase powder for shooting his coal and that averages about 3¢ per ton. The average production per miner in the entire Appalachian area is 9.1 tons per day, according to an [fol. 560] estimate submitted at our conference by the National Recovery Administration. In addition to his deduction for powder the miner has a regular charge of 5¢ a day placed upon him for the use of electric caps which he has to use. Then he has a charge for blacksmithing which ranges anywhere from ¼¢ on each dollar to as high as 1¢ in certain territories. Then the miner has his regular charges for doctor (1031) ranging anywhere from \$1 for a single man to \$1.50 and in some cases \$2 for married men, per month. Then the miner has his normal charges to maintain him at his job, for the purchase of his mining equipment, his tools, such as picks, shovels, augers, sledges,

wedges, axes, and all the other implements necessary. It has been conservatively estimated by people who have made a study of these charges that the average deduction taken from the piece work miner in a coal mine is 70¢ per day. That does not include rent. (1032) At each of the important interstate wage conferences consideration was given not to the gross earnings of miners but to the net earnings. (1033) Unfortunately, most of the Government's figures having to do with the earnings of bituminous coal workers have not covered the factor of deductions. In the testimony, when I have referred to the daily wage of \$7.50 a day or \$1.50 a day or \$3 a day, I am referring to gross wage.

(1036) The attitude of the operators with respect to those constant wage cuts following the 1927 strike was one of complete helplessness. The entire industry in the Appa-[fol. 561] lachian fields had gone non-union and the forces of cut-throat competition were in operation. One producer did not know what his neighbor was paying his labor. The coal operators caught in that situation, as a result of their failure to recognize the stabilizing influence of collective bargaining were forced into the competitive rut when the tremendous forces of big buyers were brought into play such as the railroads, the utilities and the larger consumers of coal. They could go to a coal producer, for instance in Pittsburgh, and ask that coal be quoted and when quoted if it was not satisfactory they would tell the Pittsburgh operator that they would get it in the Logan or Williamson field (in West Virginia) if they could not get it there. (1037) The same forces played havoc with the smokeless fields of the south and the low volatile districts of the north. Every large consumer of coal purchasing substantial quantities of coal for use in New York or Philadelphia or whatever section it might be, would depress the price in central Pennsylvania. If the central Pennsylvania producer was unable to meet their price they would then get their coal from southern West Virginia. The coal producers were driven into a state of desperation through their unwillingness to recognize the only stabilizing influence that could substantially control the forces of competition, that being the principle of collective bargaining. Each time the price of coal was cut 10 or 15 or 20¢ a ton notice was posted at the colliery advising the mine workers, even in the middle of a pay period, that effective a

certain date wages would be reduced. The force of the economic situation caused miners to live in a condition bordering on starvation. (1038) It was a buyers' market not only then but has been for a great many years. These [fol. 562] conditions continued until 1933 and were general throughout most of the coal producing areas of the United States.

(1039) In 1933, after the passage of the NIRA the mine workers had recognition of their right to assemble and to organize under Section 7(a) and six weeks after its passage over 90% of all the coal miners in the country had joined the United Mine Workers of America. An appeal was then made by the officers of the union to the President that a conference be organized under the auspices of the Government to effectuate a wage agreement. It was suggested that a conference be convened in Washington. The meeting was held in July, 1933, and continued throughout August and the major part of September. The meeting of Appalachian coal operators and representatives of the United Mine Workers, respectively, representing 72% of national tonnage and 72% of employees, negotiated a wage agreement (1041) which became effective October 1 or 2, 1933. It established a more closely competitive wage relationship than had ever prevailed in the industry. It established a base rate for skilled inside day men—tracklayers—of \$4.20 in states south of the Ohio River and \$4.60 in the northern states in the Appalachian region. It conceded an increase of 10¢ per ton on the combined loading and cutting rates and an increase of 10% on all yardage and deficiency work. Schedules as to tonnage rates and basic day wages for all districts in the United States were written into a [fol. 563] bituminous coal code. That agreement continued until March 31, 1934. Prior to its expiration a new agreement was made which placed skilled trackmen in states south of the Ohio River on a basis of \$4.60 per day and skilled trackmen in states north of the Ohio River on a \$5 base. It also established a uniform seven-hour day and five-day week for mine workers in the Appalachian coal fields, with exemptions granted to certain classifications of labor. This schedule was written into the code and the seven-hour day became applicable throughout the nation. (1042) The agreement continued until March 31, 1935. Prior to its expiration, the conference of the Ap-

palachian operators and representatives of the United Mine Workers of America convened at Washington to make another wage contract. The mine workers representatives submitted definite proposals and the operators' spokesmen stated that they were unable to make the concessions asked for, explaining that this was due to the effect of a gradual breaking down of the price structure in the industry, which, according to their stories, commenced in 1934. The conferences continued until March 31. The President asked the mine workers and operators to continue at work until June 15 and continue to try to execute an agreement. The extension was granted until June 15. There were four additional extensions of the contract and finally in the latter part of September of the present year an agreement for the Appalachian coal fields was consummated. (1043) [There was substituted for Defendants' [fol. 564] Exhibit No. 21 a new copy of the Appalachian agreement, with a copy of the Pocahontas-Tug River agreement annexed.]

(1044) In the summer of 1933 in the midst of the campaign of organization among the mine workers in the Appalachian coal fields strikes took place in central Pennsylvania, western Pennsylvania, Ohio, northern West Virginia, southern West Virginia, Kentucky, Tennessee and Virginia, being caused by the employers' refusal to meet the mine workers for collective bargaining purposes after they had joined the union. The 1927 strike, previously testified to, continued through 1928. (1045) There were no strikes in 1929.

I attended the meeting between the operators and representatives of labor in Washington before the industry accepted the NRA code, and I took part in the negotiations. The operators who participated hailed with delight the opportunity to extricate themselves from the position they had been in prior to the passage of NIRA.

(1046) The labor cost constitutes the largest single and most important factor in the cost of production of bituminous coal. Where no collective bargaining exists, the labor factor in production costs is the factor that is most susceptible to attack and is always attacked by the producers when they are attempting to reduce costs. The balance of the costs consist largely of taxes, which are

rigid and inflexible, power charges, and other and sundry [fol. 565] maintenance charges that are all more or less fixed, and not subject to attack.

Hours in the coal industry today are fixed upon a national basis. (1047) Every organized district is operating on a basis of 7 hours per day, 35 hours per week. That constitutes today almost 92% of the operations in the country, and approximately 92% of all the men employed. (1050) You cannot maintain effective collective bargaining in the bituminous coal mining industry on the basis of negotiating contracts by small units. Coal operators are not responsive to wage making of that kind. I doubt that there is a coal operator in the United States that would be willing to sit down and negotiate a wage agreement without knowing in advance what wages his competitor is going to pay in an adjoining state or district. The district agreements as such, or small group districts, that are not truly representative agreements of that description cannot be maintained and have proven to be very ineffective. The force of the competition from territories having no agreement results invariably in the breaking down of the agreement where it is arrived at in that form. The wage differential problem in the industry is perhaps the most important and far reaching of any factor that has to do with the maintenance of competition. In the course of our wage meetings in the Appalachian region, operators from each of the producing districts first present their actual wage on a piece work basis and day wage basis, their total cost, and their labor cost, and then attempt to compare their wage and cost set-up with that of their competitor. (1051) [fol. 566] The differential problems in these great mining areas have always received major consideration in the determination of the wage agreement finally arrived at.

(1052) As an example: When we negotiated our last Appalachian wage agreement, one small district, known as the southern Appalachian district, withdrew from the conference before the contract was signed asking that it be privileged to increase its differential for day wage workers from a point 40¢ per day below the northern districts to a point 80¢ below, and to a point 40¢ below their southern competitors. The conference decided that it would not extend that privilege. When the southern Appalachian producers presented their petition the Virginia producers

presented a complaint contending that if any consideration was given the southern Appalachian district that might widen the differential as between that district and Virginia, the Virginia district would not sign the agreement (1053) and preferred to close its properties down and engage in a warfare with the mine workers, but that, at any rate, it expected to get out of the Appalachian conference the same consideration on day-wage rates as the southern Appalachian producers expected to get.

Then a petition was presented to the conference by the Big Sandy operators of Kentucky, contending that if any concessions were granted southern Appalachian, they expected similar consideration. The Hazard field presented a similar complaint, contending that they expected to get the same consideration as southern Appalachian.

The point involved in this southern Appalachian question was one that involved a cost of approximately four cents a ton for some 6,800 coal miners employed in the territory covered by the Southern Appalachian Coal Producers Association, and the repercussions of that situation were felt in the State of Virginia, back over into the Hazard field of Kentucky, over into the Big Sandy district of Kentucky, and south in the high-volatile sections of southern West Virginia, namely, the Kanawha, Logan, and Williamson fields.

So that one must understand, in giving consideration to the solution of a differential problem and of a wage conference of this description, that even a concession to a group employing 6,800 men in the southern Appalachian coal fields would have had immediate repercussions and effects in every coal-producing district in the Appalachian coal fields. It would have affected immediately 325,000 men in all those producing territories, and it would have affected every single pound of coal produced in this territory, that produced 72 percent of our national tonnage.

[fol. 567] (1054) So that in the final determination of what proper wage relationship should be, consideration is given to every element of cost, charts, maps, production figures, earnings, costs and every factor having to do with the operation of a coal mine. Then the yardstick of common sense is applied so that no interest will be injured, (1055) no dislocation of tonnages will take place and no disturbances of production will take place. The wage rate,

the day wage, the hourly wage, the yardage wage, the dead-work rate, and the payment for every known kind of deficiency, is set out. Each operator who is a party to the Appalachian contract is privileged to have a copy of each of the agreements negotiated in each of the several districts so that he can compute in his own mind what the ultimate cost of his competitor may be. The whole scheme of wages with respect to the question of differentials is considered in its every phase and with most minute detail and the mine workers who are parties to these contracts have to exercise the greatest amount of care in making intelligent and honest decisions because of the very distressing and rather selfish competitive influences that dominate the producers, exercising care at all times to see that every producer who is a party to the wage arrangement is given an [fol. 568] honest deal.

A checkweighman is a miner employed by the mine workers and paid by them to check the weights on the mine tipple. (1056) So far as it affects a coal miner, the employment of a checkweighman is one of the most important things in his life. The history of the industry is replete with abuses which have resulted from practices where corporations have refused mine workers the privilege of employing a checkweighman. The men are deprived of their honest weight. We have had many instances in all these fields, not only the south but the north, where the miners have no organization and where they have had no checkweighman. The record is replete with facts showing that mine workers were deprived of their wages in amounts ranging from 10% of the amount they actually loaded to 50%. When we were negotiating our 1933 wage agreement the code had a provision in it requiring the companies to recognize the employment of checkweighmen. We had such a provision written into our 1933 contract. (1057) The checkweighman sees that the weight of the coal produced by each miner is accurately determined. Under the Appalachian agreement, the miners have the right to choose their own checkweighman and they pay him themselves. The presence of the checkweighman imposes no burden upon the operator. When we signed the 1933 agreement we had to extend the time 60 days to almost every non-union producer in the Appalachian territory, (1058) to furnish them [fol. 569] an opportunity to put scales in the tipples so that

the men could have a checkweighman employed. The matter of having checkweighmen has been investigated in a number of Federal and State investigations.

(1059) There has been in the coal mining industry a requirement that mine workers live in company houses and trade in company stores. That was a condition of employment in the non-union mines prior to 1933. The effect of the requirement was to prohibit or prevent men from enjoying privileges that ordinarily accrue to citizens who enjoy freedom to rent where they please. (1060) The forced use of company houses was part of the life of the non-union sections of the United States, a condition that developed with the prohibition of free assemblage and the individual or yellow dog contract. It is all part of the general non-union scheme of things and had its distressing and dire effect not only upon the people who occupied the homes directly but also a terrific competitive effect because of those advantages over producers who recognized certain rights in union territories in various sections of the United States. I have read hundreds of rental agreements all over the country. (1061) I have not read Carter Coal Company's agreements. The rental agreements generally contain provisions that require the employee to vacate the house on notice if he violates any of the regulations or stipulations set up in the individual or yellow dog contract. If he attended a meeting of the union he was subject to eviction. (1069) These rental agreements have a decided effect upon the wage standards of the miners, not alone in [fol. 570] the actual amount of money that the employee is required to pay for the renting. The lease so overshadows every activity of the miner's life while he is in the employ of that company that it is the controlling factor in his need for dealing at the company store, (1070) because his refusal to deal at the company store might mean his eviction from the company house. Again, his refusal to accept a change in his working conditions that might reduce his earnings makes him assume the immediate hazard of being evicted from his home.

After discharge there follows immediate eviction, so that the forced living in company houses is one of the most dominant factors in a miner's life. By immediate eviction I mean that the employee can be given notice at any time by his employer. He usually resorts to the local justice of

the peace to get a stay of the execution of that eviction but, pending the hearing of his case, his furniture oftentimes is in the street. The lease provides for eviction upon notice. We have had thousands of instances when our organization has been required to take these miners and move both them and their families into some sort of place until the miner was able to get employment elsewhere. (1077) That is one of the many conditions that has contributed toward countless numbers of strikes.

The history of collective bargaining is based upon the theory that it will build up better industrial relationships [fol. 571] between employer and employee. I know of no labor agreements in the United States with respect to any other industry that go deeper into the problem of setting up improved relationships between employer and employee than do the collective bargains arrived at between our organization and the operators. It reduces strikes. (1079) Each of our district agreements provide for the selection of a mine committee the duties of which are confined to the peaceful adjudication of disputes arising under the agreement. In event disagreements ensue between (1080) the mine committees and the mine management, or between the management and the representatives of the United Mine Workers of America who happen to be officers of the district organization, then a method is usually provided for reference of the disputed question to an umpire or board of arbitration. Every possible precaution is taken to prevent the possibility of a strike occurring during the life of the agreement. We find that this system of collective bargaining has built up in the industry a better and closer relationship and a better understanding between employer and employee than usually prevails where collective bargaining does not exist. It prohibits strikes and penalizes the men who indulge in strikes in violation of contract.

(1081) Collective bargaining binds all parties represented and all the wage earners who appoint representatives to negotiate. Our contracts are all made and based [fol. 572] upon the rule of the majority ruling. That applies to all our policies.

There was martial law in the State of Alabama in 1908, with the use of state militia. There was martial law in Westmoreland County, Pennsylvania, and the use of state militia in 1910. There was martial law in the State of Colo-

rado in 1913 (1082) involving the use of state militia. In 1919, during the October and November strike, Federal troops were used in the State of Wyoming. In 1920 and 1921 Federal troops were used in West Virginia. In 1922 Federal troops and National Guard were used in central and western Pennsylvania, Colorado, Ohio, Indiana and Kansas. In 1927 in central and western Pennsylvania there were used the state militia and there was the issuance of sheriffs' proclamations prohibiting meetings. In 1935, in western Kentucky, state militia were used. I have had personal experience in dealing with the problem of strikes where Federal troops were used, particularly in West Virginia. In 1921 I was requested by President Harding to cooperate with Brigadier General Barnholtz of the Federal Army in quelling an insurrection in West Virginia, so termed by the Governor and by the President. The unionized portion of the southern high volatile section of West Virginia and the non-union portion of that territory in 1921 was separated by a mountain known as Blair Mountain, (1083) the Little and Big Coal River sections of the Kanawha field being located in the organized portions [fol. 573] of the territory, and the Logan and Williamson fields being across the mountain. For a period of about three months prior to development of this insurrection, riot or whatever it might be called, there was considerable sniping between what were known as Baldwin-Felts guards employed by coal companies in the Logan field and union mine workers who were on the union side of the mountain. The shooting resulted in two men being killed by the Baldwin-Felts people at a little town named Sovereign, some 60 miles south of Charleston. When these men were shot, the alarm was spread and mine workers employed in Paint and Cabin Creek, Kanawha, Big and Little Coal River sections, started out en masse, with guns, and marched in the direction of Logan where some 10,000 of them under arms were engaged in virtual war with an army of Baldwin-Felts guards and members of the state militia, for a period of three or four days. The President was asked by Governor Morgan for Federal assistance and he despatched 5,000 Federal troops and located them at the town of Hamilton, Ohio, ready to move into the war zone. There was a great deal of shooting, a number of people injured. (1084) In the midst of this conflict I was called over the telephone

by President Harding at the City of Indianapolis and asked if I would not render whatever assistance I possibly could toward quelling the disturbance by going out into that zone and asking the people to peaceably return home before the Federal troops moved into the war zone. I told President Harding I would do so and I went to Charleston, West Virginia. I traveled from Charleston to Marmet and from there to Sovereign and met numbers of men patrolling the highways. The railroad running along that section of 60 miles had been taken over by the miners. Trains were commandeered and supplies were being run from commissaries by men who were fighting on the alleged battle front. (1085) I succeeded, with the assistance of Major Hamilton of the United States Army, in persuading the mine workers to return to their homes and so reported to Brigadier General Barnholtz who was stationed in the City of Charleston and in actual command of the activities of the Federal troops not only in Hamilton, but the 200 of them who had moved into Charleston and made their home there. Had it not been for the threat of the presence of Federal troops in that scene, I am quite confident, and the situation was agreed upon by Brigadier General Barnholtz, that there would have been a great amount of property destroyed and a considerable number of lives lost. It was all the outgrowth of a terrific and terrifying economic situation.

Cross-examination.

By Mr. Whitney:

(1091) I cannot tell you the exact number of mines that were concerned in the so-called insurrection in West Virginia in 1921, but practically the whole Kanawha district and the Williamson field and Mingo County were involved. That was about 14,000,000 tons annual production. The [fol. 575] Kanawha district was closed up for about 14 days and the Mingo County field was substantially closed for a period of a year. (1092) I do not think any production in the Logan County field was closed down for substantially a year. In central and western Pennsylvania in 1927 almost all the areas affected by the strike were policed by state troops. That also would be true of the policing by state troops of the strike of 1922 in central and western

Pennsylvania. I could not speak with the same degree of knowledge of the Kansas situation at that time or of the Colorado situation in 1913. All I can refer to in connection with the use of state troops there is the record that they were used. (1093) I have no personal knowledge of the Kansas or Colorado situations, other than the reports of the officers of the United Mine Workers of America at their annual conventions.

The use of company houses was not confined to isolated communities alone. Company houses and company stores were found both north and south, whether they be contiguous to or right in the heart of centers of population or in isolated sections. The common practice in mining is to build mining colonies around the mining properties. (1094) With respect to my testimony yesterday that generally south of the Ohio River miners were denied the right of assembly, as contrasted with the north, I mean that in the isolated mining communities, the township government was usually controlled by the coal company. Where coal [fol. 576] mines are located in the centers of population the local government is in the hands of a free electorate. The contrary is true in isolated mining camps where mining properties are completely controlled as to ground, houses, buildings and mines by the mining companies. The policing of the property usually takes place by the companies. There are a number of isolated coal mining communities that are built up and ruled in the north in the same fashion as they are in the south. Anything that I may have said with reference to that situation was not spoken in terms derogatory of the south as against the north. (1095) Conditions in non-union communities, north and south, have always been pretty much the same.

The rent paid by miners depends largely upon the kind of house. Miners living in company houses usually do not get the same kind of house that they are able to get in centers of population where there are better housing facilities. The rent for the average low-grade company house is not a high rent. The rent for a fairly good company house in a fairly good mining community is reasonably high. (1096) That would depend upon the kind of a house. The normal rent depends upon the size. Company houses range in size from 3 rooms to 6. I know where company rentals run to \$22 and \$23 a month for a five-room house. That is not

normal. There is a breakdown of that high rate to something approximately \$10 to \$16 depending on the kind of a house. If a company supplies a miner with electric lights, which is not the common practice, or if it supplies him with running water in the house, or other facilities, then the [fol. 577] mine worker usually has to pay for those things. There is no uniform rental in any district. There is always a variation in rental charges, depending upon conditions in each mining community, and the kind of house the company rents. Offhand, I could not name the exact communities in which the \$23 houses are found. I have seen \$23 company houses in the Pittsburgh district. (1097) I think the town was contiguous to the Brownsville district. There they had brick houses with bathrooms and modern, up-to-date facilities, and I thought, after examining the houses, that the rents were reasonable, compared to rents charged by outsiders. I do not know what the average rent is in the Smokeless district. The amount of rent a miner is required to pay is never written into a basic agreement. In some of our district agreements there are provisions and stipulations which oftentimes provide that for this period or that there shall be no increase in rents or no decrease. I do not know how many leases I have seen for houses in the Smokeless district. I did see some blank forms of lease during the hearing in the Red Jacket case, in 1926.

(1099) Where there was a denial on the part of the company of the men's right to employ a checkweighman to see that they were given proper weights, it resulted in considerable unrest. I have heard miners make charges in our conventions and at public meetings that they were robbed of their weights in amounts varying from 10% to 50% [fol. 578] of the actual amount of coal loaded. I have heard coal operators make the same statement. (1100) I cannot point out any single instance of my own personal knowledge where I saw a man being robbed of his weight. All I know is that these men who said they were robbed have made these allegations. Where the practice of companies is to deprive the men of their right to have a checkweighman, then the natural answer to the situation is that the reason a company will not give the men the right to employ a checkweighman is because they want to cheat them. This is not merely what I think, Mr. Whitney, but what I have been told by reputable coal miners who load the coal. If

you were privileged to have but one year's experience in the mining industry you would not ask me such a question as to give the name of the miner, the operator and the mine where a miner was cheated. Almost every coal operator in this business will admit that for years the practice of chiseling in mine workers' weights has been the common practice. But if you want a particular example I will give you one, with the name of the miner affected, the amount of weight he was robbed of by a non-union mine, and the name of the coal company. (1102) When I was a boy 16 years of age loading coal at the Keystone shaft in Westmoreland County, Pennsylvania, I was deprived of my own weight in amounts approximating 40% of the coal loaded. The name of the company is the Keystone Coal & Coke Company. The name of the general manager was H. F. Bovard. The name of the family evicted from their home without notice was Murray. The head of that family's name was William. His son was Philip. I am the individual that was involved. Because of the complaint I made I was discharged and the day after a strike took place my father and his eight children including myself were thrown into the street. That [fol. 579] was in 1903. I could give you examples of hundreds of coal miners that would be willing to come here and testify in this Court under oath in the same fashion that I have. I cannot give the names here today, but I can certainly produce them if the Court desires them, and Mr. Whitney wants them.

(1103) When I testified this morning upon the subject I was expressing what other people had told me and individuals who I think would be quite willing to come here and testify to that effect. It has been practiced at non-union properties where the men have been deprived of checkweighmen.

I would say it has been the normal and usual practice to defraud the men at such properties. The men are not protected by the State courts because a coal miner has no money. He is alone. He has no organization to defend him. He has nowhere to go. If he goes to a court, or to a magistrate, to protect those things, he is usually discharged. (1104) The men refrained from going to the state courts because they were afraid of being discharged. If a man brings a case for fraud he will invariably be discharged. I am not finding fault with the law, Mr. Whitney.

It is the condition under which the man is employed that deprives him of the opportunity to get the benefits of the law. He lacks organization. He has no money. He cannot employ counsel; and if he does go, he will be discharged. He will get the same treatment I got, the same treatment I have known lots of other people to get under like circumstances. (1105) Every coal mine in the Smokeless field, so [fol. 580] far as I know, has a checkweighman today. Every single operator in that territory is operating under contract with the United Mine Workers of America. Every coal company, including Mr. Carter's company, recognizes the right of the men to have a checkweighman. Under our present arrangement, the mine workers' organization has no complaint to make of the treatment that employers are giving our people in any of these territories. (1106) That covers about 90% of the tonnage in the United States.

So far as I know, with respect to the strike of 1919 which lasted about six weeks, the following, which is contained in a statement in "Coal in 1919, 1920, and 1921", Government Printing Office, Washington, D. C.:

"By the time the strike had reached its sixth week consumers' stocks in the territory north of the Ohio and Potomac and east of the Mississippi were dangerously low and industries were beginning to close for lack of fuel."

is a correct statement.

With respect to the strike in 1922, in connection with which I testified that the consumers lost about \$400,000,000 estimated at \$1 a ton on 400,000,000 tons, the strike lasted from April 1 until about the middle of August. The strike itself affected or stopped about 70% of national production. (1108) There was a diversion of the tonnages that were immediately tied up to the non-union districts that were still in operation. To what extent the slack was being taken up through the operation of the non-union mines, I [fol. 581] cannot say. With respect to the \$400,000,000 I am talking about the prices the consumer had to pay for the 1922 strike, not solely about the 1922 production, and about the effect so far as prices were concerned being carried over into the 1923 production. I would not say that as a result of the 1922 strike 1923 prices were higher than 1922; I do not know that they were higher in 1923 than

they were in 1922. I know that they were unusually high during both years.

(1109) If I am not mistaken, the total supply of coal stocks above ground before the April strike in 1922 was estimated at around 75,000,000 to 80,000,000 tons. When the 1922 agreement was in existence the best figures obtainable in the industry indicated that the total cost, including labor and all other charges, would approximate \$2.70 a ton. The only way you could find those figures would be, I suppose, through the medium of things such as I have gone through in wage conferences, such as the cost sheets of companies. (1110) To arrive at the figure of \$400,000,000 which I previously testified to, the statistical division of the [fol. 582] United Mine Workers of America was put to work to ascertain the extra charges that were placed upon the consuming public as the result of the 1922 strike. In the course of our studies of that situation, the field men attached to our statistical department were required to go into every consuming center throughout the country and also take the quoted prevailing spot and contract prices from the trade journals as of those months during the peak period of prices, and the information we collected respecting this \$400,000,000 statement which I previously made was derived from that source. I think you will find through a casual looking into the record as of those dates that the average sale of coal under contract from the end of the strike in August until the following April shows that most of the contract coal sold in this country, to railroads especially, was on the basis of \$3.75 a ton. (1111) The estimated charge on spot and current coal during that period ranged from \$8 to as high as \$20 delivered price to the consumer. With respect to the figure of \$2.68 average of all coal in 1923 set forth in "Coal in 1927", I do not know where Sydney Hale and Mr. Tryon (who edited "Coal in 1927") got their information at that time. It may be that they secured their information from different sources than we did, but my calculation is based entirely upon a survey that was made by our own statistical organization during the years 1922 and 1923.

My memory as to 1925 is that there had been private po-[fol. 583] lice and injunctions, notably in Indiana County, central Pennsylvania, and interruption to mines aggregating several million tons, and that there had been some phys-

ical combat. In the Allegheny County courts you will find a record of 400 cases involving physical combat. (1112) The Allegheny County court is a court of the State of Pennsylvania.

It would be difficult for me to ascertain the average wage during 1933, when nobody knew what his neighbor was paying. When I stated that the basic wage dropped at the minimum to \$1.50 a day and that substantial producers paid \$3 a day, I was giving to you the benefit of such information as coal producers have given to us since our 1933 contract was negotiated. I think that coal producers are reliable men just like other men are, and I have obtained this information during the course of our joint conferences. I do not think that anyone could give the average wage paid during 1932 for mine workers. There was a variation of wages ranging anywhere from \$1.50 to about \$3 at its peak in the beginning of 1933. (1113) It would be just as difficult to establish average working time. When I stated that the hours in 1933 went from 8 to 10, 12 and 14, I was giving to you what I thought was a rather vivid description of the conditions that prevailed throughout the country but I do not know that there was any uniformity as to hours or wages in any district.

When I testified this morning that Government figures on wages do not take account of deductions for powder, [fol. 584] dynamite, other explosives and other deductions of that character, including blacksmithing and tool sharpening, I did not have in mind figures other than those in the booklet entitled "Wages and Hours of Labor in Bituminous Coal Mining, 1933", which says that it purports to state the average earnings for miners computed on net earnings after such deductions. I think the Department of Labor, in connection with those 1933 studies, depended to a substantial extent upon such information as we were able to give them. I do not know prior to 1933 of any authentic figures and I doubt that even the 1933 study (1114) made by the Department of Labor details in any particular sense the common factors used in arriving at the 70¢ conclusion that I gave the Court here this morning. It is true that the report states that the figures given are net, after deducting the items in question. I did not supply the Department all the information that it has there. I was like other people asked to assist the Department in giving in-

formation that might be helpful to it. I would not say that the information is in error.

(1119) [There was offered and introduced in evidence as Plaintiff's Exhibit 63 a portion of page 4 of the document entitled "Wages and Hours of Labor in Bituminous Coal Mining, 1933" issued by the United States Department of Labor.]

I assume that the figures "Before October 2nd, 8.1. After October 2nd, 8. Average for the year, 8.07" given as weighted average working day hours for 1933 in the [fol. 585] publication of the United States Department of the Interior, Bureau of Mines, entitled "Coal detail statistics, appendix to Mineral Year Book of 1934" give a fair representation of the weighted average working day and average hours for that year. I am quite willing to accept it.

(1120) It is absolutely necessary in the coal mining industry that to put the industry in order the operators know what their neighbors are paying. I do not profess to know anything about other industries.

With respect to the statement in the excerpts called "Coal detail statistics" in the Minerals Year Book, 1934, that the average number of days lost on account of the strike in 1933 was in Ohio 2 days and in West Virginia 1 day per man employed, whether that is a fair representation depends largely on the way one would care to put it. It is extremely difficult for some people sometimes to understand what one day per man employed really means. There were sections of Pennsylvania where we had no serious strikes. There were sections of Ohio where we had no serious strikes. There were sections in West Virginia where we had no serious strikes; and yet other portions of those three states were seriously affected and tied up for some time during the 1933 period. It was not a national strike conducted by any organization. Those were sporadic outbreaks taking place in individual mines, where men resorted to the strike weapon to force their employers to [fol. 586] negotiate with them. (1121) In the coke field, for example, in western Pennsylvania we had a strike situation involving 15,000 or 16,000 men. That strike was not brought about as a result of the refusal of the United States Steel Corporation at the outset to negotiate an agreement—or the Republic Steel or Wheeling Steel or any of the other

large steel companies—but the strike was precipitated by the companies' refusal to give the men a checkweighman. It lasted in that territory for several weeks, while other sections of the Pittsburgh territory were not affected. The same might be said of the northern field of West Virginia where we had local strikes. The same was true in the territory from which Mr. Carter comes, in the south. There were local sporadic outbursts on the part of the men. No strikes were called by the organization.

I would not say that the 1927 strike was a large, almost nation-wide strike. I would describe it in this way: The 1927 strike originally involved four states, perhaps five, including a portion of the northern West Virginia district, Illinois, Indiana, Ohio, and western Pennsylvania; but the 1927 strike in its inception in the western Pennsylvania and central Pennsylvania districts was not a 100% strike because the contract had already broken down. It had been abrogated by certain large producing companies. (1122) The Pittsburgh Coal Company, mining and producing some 12,000,000 to 14,000,000 tons of coal during that period, had abrogated its wage agreement. It had men [fol. 587] producing some coal but not all of the 12,000,000 to 14,000,000 tons. It was operating two or three days when it could operate because of the strike. The same was true with reference to the Buffalo, Rochester and Pittsburgh Coal and Iron Company, in central Pennsylvania, which is perhaps the largest commercial producer in that territory. Its mines were not affected 100% by the 1927 strike. The same was true of the Consolidation Coal Company in central Pennsylvania and in northern West Virginia. So, for purposes of production, I would not say that the 1927 strike tied up quite so much coal as did the 1922 or the 1919 strike. In 1927, as in the earlier strikes, the difficulty of the mine workers was that the non-striking territories continued to ship coal into markets that would otherwise have taken the coal that the men on strike would have mined if they had not been on strike. There is no question as to that. (1123) I would not say that that has been the really fundamental difficulty in securing national collective bargaining. These collective bargains, embracing a very substantial portion of the national tonnage but not being able, through their influence, to regulate wages and working conditions in the non-union territories oftentimes after a year, six months or

two years, severely felt the impact of the low wage scale in the non-union territories. The large buyers of coal would go to the non-union territory where the wage was low. They would exact a price considerably below the figure that could be submitted by the union producer who was [fol. 588] paying a higher wage. The union producer would continue to recognize the maintenance of that union wage just so long as his own economic situation might permit it, and then, driven by the force of circumstances, he would immediately abrogate his agreement and post a notice at his mine advising his employees that he would be obliged to reduce their wages to enable him to enter the market of his competitors operating on a non-union basis.

(1123) That has been the history of this thing. That has been its effect. That is what has led to these great industrial catastrophes. That is what has led to these riots, bloodshed, and killings in almost every coal mining village throughout the country.

(1124) Redirect examination.

By Mr. Lewin:

(1124-1130) [The witness identified and there were offered and received in evidence the following: Plaintiff's Exhibit No. 64—Executed lease of Pursglove Coal Mining Company, page 1250, Volume I, Hearings before Committee on Interstate Commerce, United States Senate; Defendants' Exhibit No. 27—Unexecuted lease forms contained in the hearings before the Committee on Interstate Commerce, United States Senate, on the following pages: Page 2119, 2111, New River Coal Company; page 2095, Cabin Creek Coal Company; page 2008, Brady-Warner Coal Corporation; page 2057, West Virginia Coal & Coke Company; page 1918, New England Fuel Company; page 1249, Jere Mine House.]

(1127) By the Court:

I have seen some of those agreements that were executed but most of them were forms that were presented to employees when they either sought a position at the mine or secured a position. The forms then had to be taken to the

company's office and duly executed, and signed copies left with the company and given to the individual.

[fol. 589] By Mr. Lewin:

(1128) The lease, Plaintiff's Exhibit No. 64, has been signed by Milton Austin.

By Mr. Whitney:

Milton Austin has been a prominent member of the United Mine Workers of America in the northern field of West Virginia for a good many years. I have known him for a good many years—a delegate at our conventions. I believe I saw the original of the lease when it was presented to the committee during the Senate hearings (1129). The reputation in the industry of the Pursglove Coal Mining Company for the treatment of its employees is just as good as any other company that I know of in the United States.

(1130) Recross-examination.

By Mr. Whitney:

Referring to the lease agreement of Mr. Austin's (Plaintiff's Exhibit No. 64) I cannot say that I am familiar with the house that was leased under the agreement (1131). I have no information as to the character of the house that would enable me to testify whether \$4 per month was an excessive rent. I cannot say that I am familiar with the character of leases in that vicinity generally. I think that any kind of lease that is forced upon an employee under conditions such as that is highly unfair. I do not refer to the fact that either party may cancel the lease on five days' notice. I refer to the conditions under which the leases are [fol. 590] signed. That particular lease gave the Pursglove Company the right when a man quit their employment or was discharged for any cause whatever it may be to immediately vacate the house. The Pursglove Company operates in the Scots Run district of the Morgantown field. (1132) I suppose its mines are located some six or seven miles out of the City of Morgantown. All the houses in that community are near the mines. It is quite true that if all of the employees of the Pursglove Mining Company quit their employment with the company the effect would be

to stop production. A very small percentage of miners own automobiles. (1133) It is quite true that if the company could not find miners who were willing to walk or otherwise travel the six or seven miles from Morgantown it could not reopen if its miners should quit their employment, unless it could lease its houses to the miners who were going to work. These leases are used as a means of preventing men from holding membership or affiliation in any union labor organization during their employment with the company. I do not think companies usually resort to the evicting of 300 miners at a time. I cannot give any instance where they have evicted 300 miners at a time.

(1134) Further redirect examination.

By Mr. Lewin:

I know numerous cases where lesser numbers than 300 miners have been evicted. (1135) Those were cases involving these rental agreements or leases where employees sought the right to join unions and to attend meetings and they were immediately discharged and when discharged were immediately evicted from company houses. I am not personally familiar with the evictions mentioned in the Red Jacket case.

[fol. 591] FREDERICK E. BERQUIST, a witness called on behalf of defendants, first being duly sworn, testified as follows:

Direct examination.

By Mr. Critchlow:

(1153) At the present time I am in charge of the bituminous coal section, Division of Review, N. R. A. I have been in charge of statistical research and economic work of the N. R. A. since its inception, for the bituminous coal industry. I have had complete charge of the work relating to statistics and economic analyses during the pre-code period for the purpose of assisting in the formulation of the code, and during the period of the code relating to such statistics as were gathered by the N. R. A. with reference

to wages, costs and realization of the bituminous coal industry. At the time of the passage of the N. I. R. A. I was a member of the staff of the Coal and Coke Statistics Section of the Bureau of Mines and was transferred from that position to the NRA to carry on their economic and statistical research work. I was a member of the staff of the Bureau of Mines for 15 months. (1154) Prior to that I had charge of the decennial census of mines and quarries for the year 1929. I was with the Bureau of the Census from the Fall of 1929 to the Spring of 1932 at which time I joined the staff of the Bureau of Mines. From 1926 to 1929 I was assistant and associate professor of industrial economics at Carnegie Institute of Technology, Pittsburgh, handling courses relating to natural resources and industrial economics. Prior to that I was graduate student in economics in Washington doing much of my work in connection with the Bureau of Mines.

[fol. 593] (1166) FREDERICK E. BERQUIST, heretofore called as a witness on behalf of defendants, resumed the stand and testified further as follows:

Direct Examination—Resumed.

By Mr. Critchlow:

[There were offered and received in evidence the following: Defendants' Exhibit No. 28—Chart entitled "Comparison of total tons loaded at mines for shipment to selected competing states, 1913-1934"; Defendants' Exhibit No. 28-A—Table entitled "Bituminous coal loaded at mines for shipment to selected states and the percent of coal tonnage of those states loaded in each of the component states, 1913-1934"; Defendants' Exhibit No. 29—Table entitled "Shipments of bituminous coal to tidewater, 1920-1934, inclusive"; Defendants' Exhibit No. 29-A—Table entitled "Shipments of bituminous coal to Lake Erie, 1920-1934, inclusive"; Defendants' Exhibit No. 29-B—Table entitled "Shipments of west-bound coal from Appalachians, and from Illinois, Indiana and western Kentucky"; Defendants' Exhibit No. 29-C—Table entitled "Bituminous shipped to New England by rail and by northern and southern ports, 1919-1934, in tons"; Defendants' Exhibit No. 30—Table entitled "Index of tons loaded at mines for shipment

and realization during the period of the Jacksonville agreement for selected states, 1924-1929"; Defendants' Exhibit No. 30-A—Table entitled "Index of tons loaded at mines for shipment and realization f. o. b. mine for selected com-[fol. 594] peting states, 1923-1933"; Defendants' Exhibit No. 31—Statement entitled "Comparison of production and realization, f. o. b. mines, between two groups of states east of the Mississippi River, 1923-1933"; Defendants' Exhibit No. 31-A—Chart entitled "Comparison of production and realization f. o. b. mines between two groups of states east of the Mississippi River, 1923-1933"; Defendants' Exhibit No. 32—Chart entitled "Comparison of average hourly earnings between two groups of states east of the Mississippi River, for specified years, 1919-1933"; Defendants' Exhibit No. 32-A—Statement entitled "Comparison of average hourly earnings between two groups of states east of the Mississippi River, for specified years, 1919-1933"; Defendants' Exhibit No. 33—Chart entitled "Number of mines in selected areas in which trackmen were paid rates falling in specified wage intervals, May, 1933"; Defendants' Exhibit No. 33-A—Table supporting No. 33; Defendants' Exhibit No. 34—Statement entitled "Number and percent of mines in selected areas in which outside common labor was paid rates falling in specified wage-rate intervals, May, 1933"; Defendants' Exhibit No. 34-A—Chart entitled "Number of mines—selected areas—in which common labor was paid rates falling in specified wage-rate intervals, May, 1933"; Defendants' Exhibit No. 35—Statement entitled "Importance of bituminous coal in freight railway traffic"; Defendants' Exhibit No. 36—Tabulation entitled "Annual bituminous coal production, state totals and their proportion of total United States, 1913-1934".]

[fol. 595] (1167) There have been major shifts of tonnages from one producing state to other producing states in the period since 1923. The most conspicuous example is the shift from states north of the Ohio and Potomac Rivers to the states south thereof, the states to the north being Illinois, Indiana, Ohio and Pennsylvania, and those to the south being Kentucky, West Virginia and Virginia. These displacements are illustrated in Defendants' Exhibit Nos. 28 and 28-A. (1168) The table, Defendants' Exhibit No. 28-A, gives the tonnage of bituminous coal loaded at the

mines for shipment for seven selected states, and the percent of total tonnage that each of these states loaded in each of the years 1913 to 1934. This group of states represents a major competitive unit in the coal industry and represents normally about 87% or 88% of the total production in the industry. The chart has been prepared on a percentage or index basis to simplify the presentation of the table. The perpendicular length of the chart for the various years represents 100% of the shipments for the seven states and the portion that each state received is represented by the band extending across the sheet in different shadings. Substantially, there was no shift in tonnage from the north to the south during the period from 1913 to 1921. It was a period in which both sections were gaining in tonnage but relatively they remained about the same. There was no marked change.

(1169) I have been engaged in a study of the trends in the coal industry for some years. It has been my principal [fol. 596] duty in connection with the NRA to make studies over this period of years. I have been head of the bituminous coal unit of the Division of Research and Planning, latterly known as the Division of Review. My duties with the Bureau of Mines had to do with the compilation of statistics on an annual, a monthly and a weekly basis, and the various services the Bureau of Mines performs in connection with the coal industry along statistical and economic lines. (1170) In the Bureau of Mines I had charge of the decennial census of mines and quarries which covers every comprehensive data relating to companies, employment, etc., for the bituminous coal industry, which, on the decennial basis, is probably the most comprehensive and detailed survey made of the mineral industries. At the time of my transfer to the NRA I was required to collect, compile, analyze, and present all the known relevant data with regard to bituminous coal that we could get our hands on, both official and private, and we compiled and presented in report form for NRA practically all manner of information relating to the coal industry that had a bearing upon the establishment of the code. That study covered primarily the post-war period but went back as far as 1882, (1171) when the Geological Survey began collecting figures.

I think the peak (showing the percentage of production in southern states) shown in Defendants' Exhibit No. 28

for the year 1922 was predominantly caused by the major strike which occurred in that year. It was a strike of long duration and covered a great deal of territory, particularly [fol. 597] in the states north of the Ohio River. In the year 1923, Kentucky, West Virginia and Virginia contributed 36.1% of the total for the selected group of states in bituminous coal loaded for shipment. In 1926, the corresponding percentage was 47. The maximum percentage of the total for the southern group was reached in 1927, when it was 53.9%. That was the year of the great strike which came at the expiration of the Jacksonville agreement on March 31, 1927. The following year, the percentage dropped back again (1172) as it dropped in the year 1923 as compared to 1922, after the strike at that time. The strike in 1927 had little effect on the total shipments of coal. For the year as a whole the coal produced was quite adequate for the demand and for the country as a whole. It had considerable effect on the relative proportions between the groups of states. As indicated in the chart, there was a very sharp rise in 1927 as compared with 1926 or 1928. In 1927, the percentage of the total for the southern group of states was 53.9% and in 1928 was 50.4%. There again was a strike in Illinois and Indiana and part of Ohio, which affected somewhat the production of those states and correspondingly resulted in a greater share to the southern states. This was in 1928. In 1932, on March 1, the contract in effect in Illinois and Indiana expired and there was a strike of some months' duration. There was also a strike in part of Ohio, (1173) which affected the share of the total tonnage enjoyed by the north. In 1933, the percentage for [fol. 598] the southern states was 50.2% and in 1934 it was 48.9%.

In the southern group, Kentucky, West Virginia and Virginia, the percentage of the total shipments increased from 36.1% in 1923, to 50.2% in 1933. Conversely, the shipments in the northern states declined from 63.9% in 1923 to 49.8% in 1933. Comparing 1923 to 1929, the shipments in the northern states decreased 52,800,000 tons, whereas the shipments increased in the south 50,300,000 tons. This is a comparison between those two particular years, not a cumulative figure of any shift.

(1174) Defendants' Exhibit- Nos. 29, 29-A, 29-B and 29-C show particular movements, namely, coal moving to tide-

water, coal receipts in New England, the lake-cargo-coal movement and the all-rail west movement. Roughly, they indicate for those specific movements, much the same as is shown in the chart, Defendants' Exhibit No. 28. Most of the coal that is produced in the three southern states moves to outlets north of the Ohio and Potomac Rivers, and New York and New England generally. They would consequently reflect very much the same type of shift. (1175) The percentage those mines have increased from the southern states and declined from the northern group relatively indicates the trend. That is accentuated in certain years of strike. The most striking table is that for coal shipped to New England by rail and by northern and southern tidewater ports for the years 1919 to 1934. New England receives its coal both by rail and water, all-rail shipments originating in Pennsylvania and northern West Virginia, with a slight amount from Maryland, and we note that for that movement, as between 1923 and 1933 there was a decline in percentage from 41.9% to 29.7% of the total coal shipped to New England. With respect to tidewater shipments made from New York, Philadelphia and Baltimore of coal originating in Pennsylvania, northern West Virginia and Maryland, we find a similar decline over that period from 16.1% in 1923 to 4.9% in 1933. With respect to the tidewater shipments to New England going through Hampton Roads and Charleston, we find in that same period the shipments in 1923 amounted to 42% of the total shipped to New England, (1176) while in 1933 they represented 65.4%. The coal shipped through those two ports originated in Virginia, southern West Virginia and a little in east Kentucky. In the case of the Great Lakes movement, the proportions have narrowed somewhat from 1928 on, but are not nearly back to what they were in the earlier years.

Defendants' Exhibit No. 30-A shows coal loaded at mines for shipment and the average value per ton f. o. b. the mine for the years 1923 to 1933 and the figures for shipments and for value, each being placed upon an index basis with 1923 as a base. That is done for each of the states. (1177) Value is the same as mine realization price, being the total realization divided by the number of tons involved. The [fol. 600] chart, Defendants' Exhibit No. 30, is prepared on the basis of the data contained in the table. The table

has been reduced to chart form to simplify its presentation. The chart is on a relative basis, the year 1923 being used as the base year, shipments for 1923 representing 100%. The shipments for succeeding years are shown as a ratio of the shipments in 1923. For example, the shipments in 1923 from Pennsylvania were 138,036,000 tons. That is represented by 100% on the chart. The succeeding year, 1924, the shipments were 110,000,000, represented by an index number of 79.9. (1178) The same is done for West Virginia. The same procedure is followed with respect to realization. The realization for Pennsylvania in 1923 was \$2.75 and that is represented by 100% on the chart. For 1924 the Pennsylvania realization was \$2.26, which is 82.2% of the realization for 1923, and is represented correspondingly on the chart. For each of the respective states, the year 1923 is used as a base, both in the matter of shipments and in the matter of realization. (1178) In this way it is possible to note what has happened in terms of realization of each State, compared with any other State, and of shipments for each State, compared with any other State. You can then note the manner in which each has progressed over that period of time, in relation to the other. 1923 was used as the base year because it was the next relatively normal year after the war period. We had a period of war control and in 1919 the period of the strike. In 1920 there was a period of abnormal car shortages. 1921 was a rather acute post-war depression. 1922 was featured not only by strikes but by car shortages. 1923 was a year affected very little by strikes. (1179) There was less than two days average time lost by strikes. It was a year of good general business prosperity for the country as a whole. It was a good year in the coal industry. The car shortages had largely disappeared by the second quarter, and the last half was practically free of it. Wage rates in the south were very close to those in the north, or at least were relatively as close as for any year we have had. It was a year also of peak capacity in the industry and preceded the general period of liquidating in the industry. The succeeding year the industry experienced falling prices, unstable labor conditions, differentials in wage rates, etc. On the whole I think 1923 the fairest year to use as a base. (1180) The period from 1923 to 1927 covered by the chart was a period in which the most striking example of shift has taken place.

From 1924 to 1927 was the period of the Jacksonville wage agreement. Comparing Pennsylvania and West Virginia on the chart, it will be noted that for both there was a rather sharp decline in average mine realization in the year following 1923. The decline for Pennsylvania was much less than that for West Virginia, namely, to 17.8%, whereas the decline for West Virginia amounted to 31.3%, as compared with the previous year. The disparity comes into the picture in 1924 and continues throughout the period with some deviation. The West Virginia level generally throughout the period remains lower than that for Pennsylvania. In 1926, the disparity is not so great; the spread has narrowed slightly which is accounted for, I think, by the fact of the British coal strike which resulted in a windfall for American coal business, (1181) as well as by the after effects of the anthracite strike which began in September, 1925, and lasted until February 26. 1926 also was a very high year of production in the bituminous coal industry, I believe the second highest in its history, second only to the year 1918. Similar disparities of realization are observed in the chart comparing Ohio and West Virginia, Ohio and Kentucky, Indiana and Kentucky and Illinois and Kentucky.

It will be noted that with respect to shipments the lines are reversed, that is, whereas the level of prices remains higher with respect to the index for 1923 for Pennsylvania as compared with West Virginia, the reverse is true with respect to shipments. The line for Pennsylvania drops below the average for the base year 1923, whereas that for West Virginia rises greatly. The spread for the last year, from 1926 to 1927, reflects in part the effect of the strike in 1927 following the expiration of the Jacksonville agreement. Relatively, the lines shown and the data given are not as striking in the comparison of Pennsylvania and West Virginia as for some other combinations. All show quite striking trends and disparities. The spread which is noted in realization is less than that for shipment, which bears out the fact in the coal industry that minor shifts in prices may cause substantial shifts in shipments or production. While the trend does not increase in prices and does increase in shipments the effect of the differential in [fol. 603] prices accumulates. Contracts for shipments expire and when it is time for renewal there is opportunity

to take advantage of the better market. A margin carried over a length of time results in cumulative effects until the point of equilibrium is arrived at. (1183) 1924 to 1927 was the period of the Jacksonville agreement in the north with the basic level of \$7.50 a day. During that period the relationship in southern wage rates did not maintain itself as it had earlier. In 1923 wage rates were relatively close in the south to those in the north but after 1923 they broke rather sharply and were free to break, whereas during the Jacksonville agreement the northern states were not free to break in their wage rates. There are exceptions to that with respect to the breaking away of western Pennsylvania in 1925 and some other breaks, but on the whole the level of wages and wage costs per ton was carried through.

Exhibit 31-A shows the situation with respect to prices and shipments between the two groups of states referred to from 1923 to 1933. (1184) The chart is based upon Exhibit 31 which is a table. The chart is prepared on the same basis as Exhibit 30. It extends the period through to 1933 and groups states north of the Ohio—Illinois, Ohio, Indiana and Pennsylvania as Group A, and Kentucky, Virginia and West Virginia as Group B. There are the same trends for the groups as for the individual states, namely, a sharp price decline after 1923, the greatest being for 1924 and 1925. There is a stiffening in 1926 and a continuing decline throughout the following period and a slight increase at the end reflecting the coming of the code in October, 1933, (1185) at which time prices were materially increased. The converse of the realization part of the chart is shown on the upper half in terms of production. This is in terms of production rather than shipments but the difference between the two is very slight and not material. There we note the trend for the period of 1923 to 1927 which is shown in the individual groupings. After that time there is a running together of the lines of production, the widest point being in 1927, which was due in part to the strike and in part to the cumulative effect which I have explained. In 1928, the lines have narrowed considerably and in 1929 they have narrowed some more, and so on. These are years in which the northern group of operators—Ohio and Pennsylvania—were free from the Jacksonville wage scale and were therefore able to reduce their costs and effect, relatively, breaks in prices which are

fairly constant for 1925 and 1926 but have a rather sharp break in 1927 after the expiration of the contract, which permitted them to reduce their prices. 1928 was somewhat affected by a strike in Illinois and Indiana which undoubtedly favored the Group B states for that period. (1186) Going on from 1929 the two lines converge very markedly. Wage scales had dropped considerably in the north. Much of it had gone non-union and in 1928 the contract that was renewed in Illinois and Indiana had been reduced from [fol. 605] \$7.50 to \$6.10 a day. After that period there is a narrowing of the two trend lines of production. At the end of the period there was a very considerable disparity as compared with the beginning of the period. The index of average value shows a drop from 100 in 1923 to 51.9 in 1932, a drop of 48.1%, in average realization for Group A or northern states. In the southern group the corresponding decline was from an index of 100 in 1923 to 39.9 in 1932, or 60.1%. In 1933, the figure was the same for Group A or northern states, namely, a decline of 48.1%, while in Group B or southern states the decline was 56.7%.

(1187) Exhibits 32 and 32-A compare the wages paid in the same groups of states from 1923 to 1933. The idea for all of the preceding charts are from the reports of the United States Bureau of Mines. The hourly earning data contained in Exhibit 32-A are from published reports of the United States Bureau of Labor Statistics. (1188) The data are derived from reports for particular pay periods which fall within certain limited periods of time. In 1919 those reports were gathered from the operators in the period from January to May. The next canvass was made in the winter of 1921-1922, between October 1 and February 15. The next was in the fall of 1924. The next was in the winter of 1926-1927. The next was in the first quarter of 1929. The next was in the first quarter of 1931. The next was in February, 1933. The Bureau of Labor Statistics sends out field men to collect these data. The men go from [fol. 606] mine to mine in the manner required for comparable purposes by the Bureau. They are not taken at the same point of time but are taken within those periods and represent a pay period within that time. (1189) Most of them are taken around a mid point. The sample is quite extensive. The published report for 1933 was at our instance in connection with NRA. The extent of the sample

is approximately one-third of the total men employed and of the total tonnage produced. They have used every effort to make them representative as between the union and non-union mines and for various parts of the states covered. The upper portion of the chart relates to the average hourly earnings of employees, shown in three parts: for all men, for tonnage men, and for day men. The points plotted indicate the cents per hour average earnings. The two groups of states are (1190) a combination of Illinois, Indiana, Ohio and Pennsylvania, on the one hand, and Virginia, West Virginia and Kentucky on the other. Between 1919 and the period of 1921-1922 there is a substantial increase in the hourly earnings of day men in both groups; in fact, the increase is approximately the same. Considering Group A first, the northern group, we find that the line of earnings remains relatively level from 1922 until the winter of 1926-1927. The lines on the chart do not indicate trends but merely connect the points of observation for the various periods. The next point is 1929 and we note a very marked decline in the average hourly [fol. 607] earnings for Group A. Continuing to 1931, the decline goes somewhat lower and from 1931 to 1933 there is a very drastic decline. Turning to Group B, the first period indicates the same relative increase but in the interval between 1921-1922 and the fall of 1924, there has been a very marked decline in the average hourly earnings of day men. (1191) This is the period when the Jacksonville agreement came into being. The southern rates of 1923 were relatively close to the northern rates, but in the interim there has been a considerable drop, most of which has taken place after the signing of the Jacksonville agreement. (1192) The northern states were tied to a contract and the southern states were not. As a matter of fact I believe that in the interim between 1922 and 1924 the average hourly earnings were somewhat higher than are shown in the chart. (1193) The day men are paid by the day or the hour and the tonnage men are paid by the piece. There are no deductions for outside day men. For inside day men there are such items as the charge for carbide or for the rent of electric lamps. For tonnage men there are what is known as the occupational deductions, including such items as powder, smithing and the lamp, which are the principal items. (1194) Each one of the lower blocks in Defendants'

Exhibit 32 refers to the upper block in which the ratio of the hourly earnings of Group B, the lower line, is shown as compared with the earnings for Group A. (1194) In other words, the ratio of the hourly earnings in Group B as compared with the hourly earnings in Group A in 1919 is 86.8 percent.

Then, at the next observation in 1922 the ratio is 91.6. In the next observation in 1924 we have a sharp break. We notice that the ratio of Group B to Group A has fallen very much, to 79 per cent. At the next point of observation, 1926 and 1927, it is shown that the ratio has dropped still further to 77.9 for the lower group as compared with the upper group. The two have come close together. The ratio is then 87.1. (1195) There was a great disparity as of the observation for late in 1924 and also for the winter of 1926 and 1927 and that disparity narrowed very considerably at the time of the next observation. In this period the northern group hourly earnings dropped very materially and the southern group continued to drop. At the next observation they hold relatively the same relationship and in the last period (1931-1933) in which the depression deepened very materially, we find this very marked drop in both curves, expressive of the fact that the lines rather chase each other downward and that when rates were reduced in one instance they were reduced in the other, each being to the other cause and effect, each dropping as the other dropped, with the result that at the end of the period, the hourly earnings in the southern group dropped from a high at the observation of 1921-1922 of approximately 70¢ an hour down to a level of about 38¢ per hour. Likewise the observation for 1921-1922 for the northern group has dropped from 80¢ down to approximately 48¢ an hour in 1933. The figures and the trend for the tonnage men follow much the same as that for the day men. The disparity does not appear to be quite as great but, nevertheless, the disparities occur at the corresponding points. (1196) The drop for the tonnage men was much greater than for the day men. The average for tonnage men for Group A 1921-1922 was 93.6¢ an hour, and in February, 1933 it was 44.8¢, a reduction of more than half for that period. In Group B there is a drop from 91¢ to 37¢. In 1919 the time counted for the tonnage men was the total time spent in the mine. Beginning in 1921 it was

the time at the face, including lunch, so that at that time a longer period was counted in the days worked, and used as a divisor, thereby somewhat reducing the observation in 1919 as compared with what it would have been on the [fol. 609] basis of the years 1921 and thereafter. That does not materially affect the presentation except that had it been on the same basis these points would have been slightly higher. The figure in the first column is a composite of the two figures, that is, tonnage and day men, weighted according to the proportion of men in each class. (1197) The average for all men for Group A, 1921-1922, was 89.4¢ per hour and in 1933 it was 45.8¢ per hour, a drop of 48.6%. For Group B the average for all men in the earlier period was 81.9¢ and in 1933 was 37.4¢, a drop of 54.3%. (1198) The northern line is relatively constant because of the northern union basic wage rate of \$7.50 a day going back to 1920 and continuing with the signing of the Jacksonville agreement in April, 1924. There is a slight decline due to the fact that some of the companies, notably the Pittsburgh district of western Pennsylvania, did break away. The effect of these instances of breaking away resulted in somewhat lowering the line during that period. In contrast with that, as far as the southern group is concerned, the sharp drop that is indicated between 1921-1922 and 1924 reflects the break that took place primarily after the signing of the Jacksonville wage agreement, in the summer and fall. They continued further in 1927. At the expiration of the Jacksonville agreement or thereafter was when the sharp break took place in the north and there was a considerable corresponding break in the south. A large area in the north released itself from the contract and [fol. 610] was free to negotiate with the employees at lower wage rates and did so. (1199) That is observed in terms of the next observation of 1929 when the drop was very marked in the north and there was a further drop in the south, the two being very much closer together than during the period of the Jacksonville agreement. The next observation period in the first quarter of 1931 indicates a further break from 1929. From 1929 to 1933 was a period in which only about 20% of the production was organized compared with approximately 70%. In the latter period as one cut the other cut; there was no particular basis for wages; there was no uniformity of wages; there were many

rates, being just what they happened to be at the individual operation, whatever was found necessary. (1200) The period from 1927 to 1929 was a period of declining wages throughout the country generally in the coal industry, as shown by the charts. (1201) In February, 1933, the average hourly earnings for all men in Group A states was 45.8¢ per hour and for Group B states was 37.4¢ per hour. An eight hour day for Group A would be about \$3.66 a day and for Group B about \$2.90. There was no uniformity of wage rates in the non-union area. At least, in May, 1933, for which time we have an observation taken by the NRA, there was a great disparity in the rates paid at different times within given areas and as between areas. I went with the NRA on July 1, 1933. There were surveys made at or about that time on employment and earnings for the industry in the months of November and December, 1933, for a number of areas and some beyond that time, but there [fol. 611] was a comprehensive survey made of rates in November and December, 1933. (1202) At that time also we made a survey in respect to rates in May, 1933. We prepared elaborate forms for the collection of data for the coal industry and one form in particular was devoted to collecting data on employment and earnings of the workers in the industry. In the December, 1933, canvass we requested operators to report the wage rates in effect in May, 1933. There were eight or ten or possibly a dozen classifications of day men and the customary classifications of tonnage men. The reports called for rates paid under NRA and the corresponding rates paid in May, 1933, the latter taken as a period of observation prior to such wage increases as came about during the summer of 1933 under the President's Reemployment Agreement and other urges to increase employment and wages during that summer, so it reflects probably the low point of wages prior to the adoption of the code. (1203) The data so obtained as to rates paid in May, 1933, is embraced in composite form in Defendants' Exhibit No. 33-A. Defendants' Exhibit No. 33-A is a chart illustrating the information given in the table. Exhibit 33 relates to trackmen and Exhibits 34 and 34-A relate to common labor. In May, 1933, there was a considerable disparity of wages paid by mines within the various areas. (1204) The charts refer to areas in western Pennsylvania, eastern Pennsylvania, Ohio, West Virginia,

southern subdivision No. 2 and Alabama. Those were subdivisions under the code, Alabama being a division. We [fol. 612] did not obtain information from some areas, one of which was the Smokeless area, known as southern subdivision No. 1. Others were Michigan, western Kentucky and the Panhandle of West Virginia. There are no data shown for Illinois and Indiana because they were on a contract basis at the time on a basic \$5 wage basis which was not disturbed when the code came along. Taking western Pennsylvania, in the trackmen classification, we find that in the rate per day of \$1.50 to \$1.74, one mine appears. (1205) The intervals set up are of 25¢ each. In the interval from \$1.75 to \$1.99 three mines appear; in that from \$2 to \$2.25 18 mines appear; in that from \$2.25 to \$2.50 27 mines appear, etc. One extreme is mines having a basic rate of \$4 and over and the other extreme is \$1.50 to \$1.75. There is a block of 18 mines whose basic rate fell between \$2 and \$2.25 and 16 mines with a basic rate within \$3.50 to \$3.99. The same dispersion is shown for each of the groups and gives a picture of the non-uniformity of rates paid. Substantially the same effect is shown for common labor, except that there is a large proportion that falls to the lower end of the scale because the common labor rate is normally lower than the basic inside scale rate. During that period (1206) the mines were competing with one another under widely different rates—\$3 or \$4 against \$2. This is within each of the districts, not as between districts, it being intended to show what the dispersion was within each of the districts. It is obvious that there must be [fol. 613] many strange depressions as between operators at different levels in their competition since as a result of these different rate levels you will get widely different costs of production.

While with the NRA I compiled statistics having to do with labor costs and realization from November, 1933, through January, 1935, during which it covered practically all of the industry. (1207) Certain of that information is summarized in two tables I have prepared. [There were offered and received in evidence the following: Defendants' Exhibit No. 37—Statement entitled "Labor cost per ton, May, 1933, compared with labor cost per ton 10 months April 1934 through January 1935; realization per ton, Janu-

ary through September 1933 as compared with realization per ton, April 1934 through January 1935"; Defendants' Exhibit No. 37-A—Statement entitled "Ratio of commercial production in subdivisions of divisions 1 and 2 to total of these divisions, 1933 and 1934; and average total cost, realization, and margins during the 10 months period April 1934 through January 1935".]

(1208) Where the spaces are left blank in Exhibit 37, no data were reported. A very substantial proportion of the industry submitted reports for the different months in which these data were collected. That is shown in Defendants' Exhibit No. 37-A. We have indicated there for the 10 months period April, 1934, to January, 1935, what the percentage of coverage was, first related to commercial tonnage alone, and then also showing the percentage of coverage including captive. You will note those in columns 7 and [fol. 614] 8 on Defendants' Exhibit No. 37-A. They vary from area to area but are very substantial representations, ranging from a low in southern subdivision No. 2, (1209) the southern high volatile area of 61.8% of total commercial tonnage, to a high of 95.9% in southern subdivision No. 1, the Smokeless area. (1210) On Defendants' Exhibit No. 37, picking up the line for Southern No. 1, you will note that in the first column we have no information as to the labor cost per ton in the pre-code period. The labor cost per ton as reported for December, 1933, was 96¢. If you will skip over to column No. 9 headed "November, 1933, through March, 1934" you will note that the labor cost per ton for the whole period for which we have data under the code prior to the amendment to Amendment No. 1, which was adopted in April, 1934, was an average of 94.3¢. The next column shows what the labor cost per ton was after the amendment of April, 1934. (1211) In April, 1934, an amendment to the code provided for an increase in the wage rate and also a shortening of hours from 8 to 7, resulting for southern subdivision No. 1 in a wage cost level per ton of \$1.146 during that period. The figures for realization for the period of January to September, 1933, are arrived at by process of deduction and elimination. The Bureau of Mines published the realization per ton for these different areas on the basis of the captive tonnage, the commercial tonnage and part captive and part commercial. The figures under the code were based upon the reports of

[fol. 615] commercial operators since captive operators were not required to or did not report their information. In order to make the material comparable it was necessary and desirable to remove from the realization for 1933 the effect of the captive tonnage. That we have done. (1212) In Defendants' Exhibit No. 37-A, column No. 1 is production in thousands of tons for 1933. Column 2 is production in thousands of tons for 1934, representing commercial production as reported by the Bureau of Mines. Column 3 shows the proportion for each subdivision out of the total for divisions 1 and 2. Column 4 represents the same thing for 1934. To show how each area fared in 1933 as compared with 1934 all we need to do is compare the percentages that each area enjoyed in each of the years to see what happened in the year entirely under the code and the year in which the code operated for only 3 months. The changes are not very great. In fact, the relationships are quite constant. Column 5 is the estimated commercial tonnage for the period April 1, 1934, through January, 1935, excluding captive tonnage, (1213) as estimated in my division. The next column shows the tonnage actually reported through the whole division. The next shows the percentage of reported tonnage to the estimated tonnage, and the next the percentage including the captive mines. Column 9 is the average total cost which includes all items of cost, both direct operating costs and selling and administrative costs, but it does not include capital cost, interest on borrowed funds or bonded indebtedness. It includes depletion and allows for depreciation on the basis used by the Internal Revenue or [fol. 616] reported for income tax purposes. The next column represents the total receipts divided by the total tonnage. The next column represents the margin between the average mine realization and the average total cost.

[fol. 617] (1214) ISADOR LUBIN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lewin:

I am a United States Commissioner of Labor Statistics and have been since July, 1933. Between 1922 and 1933

I was a member of the staff of the Institute of Economics of Brookings Institution and of the (1215) Brookings Graduate School, until 1926, when it was merged with the Institution. Prior to that I taught economics at the University of Michigan. Prior to that I was an economic expert in the War Industries Board and with the Food Administration during the period of the War. Prior to that I taught economics at the University of Missouri. For several years, while connected with the Brookings Institution I worked on the problem of bituminous coal and the problem of labor in that industry. In 1923 I published a book called "Miners' Wages and the Cost of Coal". In 1924 and 1925 I spent most of my time investigating the British coal industry. I published a volume called "The British Coal Dilemma" in 1927. I have kept in touch with the bituminous coal industry as part of my regular work at the Brookings Institution, through contact with people in the industry and through contact with literature of the industry. After becoming a part of the United States Department of Labor, and reviewing investigations made by our Bureau into [fol. 618] wages in the bituminous coal industry I have always had my hand on the situation. (1216) From 1923 until the advent of the NRA in 1933, the industry has been approaching a decaying state. Whereas manufacturing as a whole was growing, the output of the manufacturing industries was increasing, the employment in the manufacturing industries was increasing and payrolls in the manufacturing and service industries were increasing; in the coal industry the reverse situation was taking place. The number of people on the payroll was declining, the actual payroll was declining, and the wage rates and earnings of the miners were declining by and large. That was the general trend. The situation, I think, is the result of a series of causes. The first is the over-capacity that has prevailed in the industry for many years which has brought about the situation where competition has been exceedingly keen. In addition, you have a unique situation in coal as compared with other industries. In the first place, labor costs comprise 60% or more of the total production costs. (1217) This is greater than for any other industry for which the Census has any record. The only other industry approaching the coal industry in the importance of labor costs to total production is the railroad repair shops in-

dustry, where there is an artificial situation, mostly repair work. Materials play no part in costs. There is no other industry in which labor is so important a part of the cost as in coal. The next in line would be clay products where approximately 36% of the cost is labor. In manufacturing [fol. 619] as a whole it is 20% as compared with 60% in coal mining. That situation creates an interesting dilemma because labor costs are so important in the production costs in this industry. There are very few other sources upon which the employer can bring pressure to cut his costs. He must cut his costs almost without exception on labor. He cannot cut taxes and insurance. It is difficult to cut overhead. In the other industries the reverse is true.

If in the coal industry there is a situation of over-capacity, with certain producers cutting their prices, other producers have two alternatives: First, to continue to produce at a loss and second to cut costs, the only place in which costs can be cut significantly being in the field of labor.

(1218) Another factor which makes it difficult for the average coal producer to keep his price within the realm of cost is the problem of shutting a mine down. There is a very distinctive situation in coal mining. When an employer of labor in a factory finds that the price of his product is not sufficient to cover his costs, if he cannot cut his costs in any other way he shuts down his plant. He has certain costs that continue while his plant is shut down, his insurance, depreciation, etc. On the other hand, in mining, it frequently costs almost as much to shut a mine down as to keep producing at a loss. When a factory is shut down it is shut down completely. When a mine is shut down it is necessary to keep pumps going, for if there is a flood the mine may be ruined. It is necessary to have day men down below watching the roof. If there is a fall costs will be way up. It is necessary to watch out for gas because [fol. 620] explosions may occur. Often the mine is shut down but overhead continues. The result is that many operators find it cheaper to operate at a loss than to shut down. If an operator's competitor cuts his prices the operator will either continue to produce at a loss, meeting his competitor's price, or cut wages and make his labor bear the brunt. Usually he has been forced either to continue at a loss and then eventually find himself forced to cut his wages or cut his wages from the very beginning

and meet his competitor's price, hoping he will make enough to break even.

(1219) I have seen a study of the ratio of wages paid to the value of product in the major industries in 1929 prepared by Mr. F. G. Tryon and Mr. W. G. Young of the Bureau of Mines, and this illustrates the point I make very definitely. I have made similar computations myself. These are the census figures showing the total wages paid in each of these industries, the value of the products in these industries, and the ratio of wages to the value of the product. The two coal industries, both bituminous and anthracite, stand by themselves in the sense that wages approximate 60% of the total value of the product. The next industry that approaches that figure in any degree is car and general construction and repairs in steam railroad repair shops, where the percentage approximates 50%. The reason for this has already been stated. The other industries that anywhere near approach bituminous coal, but are a considerable distance away from it, are (1220) clay products, where the percentage is 36, lumber, 39, machine [fol. 621] tools, 35, and shipbuilding and repairs, 32. That study is a list of all industries paying more than \$50,000,000 in wages in 1929 and all mine and quarry industries paying more than \$25,000,000 in wages in 1929. [There was offered and received in evidence as Defendants' Exhibit No. 38, the above referred to paper entitled "Ratio of Wages Paid to Value of Product in Major Industries, 1929".]

(1221) In my opinion, based upon my knowledge of the coal industry of the United States and the coal industry of Great Britain and in part the coal industry of Germany and Poland, I doubt that there is any basis for hoping that the industry can by itself solve the situation as long as you have a condition where the productive capacity is far in excess of the maximum demand that has ever been experienced and where an employer can cut his costs, and consequently his prices, at will, in which event his competitors, in order to maintain their share of the output must do likewise because there are no other differentials which can be cut to lower costs. I see no possibility of the industry solving the problem by itself.

(1222) In my opinion, if these conditions are to be alleviated, two very essential steps must be taken. I think that