

BEFORE THE
ANTHRACITE COAL STRIKE COMMISSION

Opening Argument
for the Operators

... BY ...

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Mr. Chairman and Gentlemen of the Commission :

The duty has been assigned me of presenting some general opening argument for the operators who are the respondents in this case. Permit me at the outset, on behalf of those operators, to express their profound sensibility of the industry, patience and careful consideration which you have given to the wearisome and complex questions which have arisen during the hearings. This, perhaps, was no more than was to have been anticipated from the distinguished character of the persons whom the President selected to sit upon this commission, but I am very sure that neither he nor any of the members of the commission realized when it was appointed, how great was the task which it had undertaken or how manifold and involved the issues which would be raised. Speaking for the counsel representing the operators, I can most sincerely thank the chairman and the distinguished officer who presided in his absence, for the dignity and courtesy with which their difficult duties have been discharged, and the success which their character and conduct has secured in allaying any exhibitions of undue partisanship or intense feeling which counsel might under other circumstances have been tempted to display.

This inquiry is novel not only in the history of this country, but perhaps of the world. The numerous parties, the deep underlying principles, and the immense civic interests involved in the inquiry, are such as to impose upon all who are connected with it, a feeling of responsibility approaching to solemnity. I am sure that none of the counsel for the operators is disposed to regard this inquiry in a

trifling or flippant manner. We feel that in the effort to introduce testimony and construct arguments bearing upon the issues involved, we are charged with a high and solemn duty not only to our clients but to the entire body politic. I do not consider myself by peculiar gifts or by special education competent, even if I regarded is as pertinent to the issues in this proceeding, to discuss generally and upon broad lines the relations of capital and labor, or the advantages or evils of labor unions generally considered. So far as the character, aims and principles of the particular organization with reference to which demands are made in this case, are involved in the evidence before the commission, I shall feel free to speak. Beyond that I hold no brief, and will indulge in no argument.

The anthracite coal of this country is concentrated in a few counties of Central and Eastern Pennsylvania. It is a most valuable product, possessing certain peculiar qualities which give it special preference over other kinds of fuel for particular purposes, especially for domestic use. Upon the sufficient and regular supply of this fuel, the great mass of people of the Middle and Eastern states do and for years have depended for their protection against the cold of winter, and to a large extent for the supply of power for the industries which support their communities. The mining of this coal was begun something over seventy years ago, and has steadily increased in extent and importance from that time until the present. The early mining was comparatively experimental and crude. The more accessible, easily mined and purer veins were first selected, and the mining was done by unscientific methods, often involving very great waste in the product by lack of system and forethought in the manner in which it was taken out. Of late years the industry has become more difficult and expensive by reason of the necessity for mining deeper and thinner veins and contending with the many obstacles to easy mining.

The industry differs from bituminous mining in many respects, among which may be mentioned the quality and distribution, the anthracite coal being found in greatly varying conditions in a single compact territory, while the bituminous coal is found in nearly all of the states and territories of the Union. It differs greatly in the value of the coal in place as measured by the prices for coal lands and the royalties paid for coal leased, the royalties on a few tons of anthracite being often as great as the price of an entire acre of bituminous coal land. The capital required for the operation of the anthracite coal mines is very great as compared with that of bituminous. The impurities must be carefully separated from the anthracite coal and it must be screened into different sizes to meet the different requirements of the market, while the bituminous coal is sent to market practically as taken from the mines. An almost infinite variety characterizes the character, location and accessibility of the strata of anthracite coal, while the bituminous coal is usually much more uniform in its location and quality.

The commission has undoubtedly been surprised to discover what was unknown to them and to the public prior to its appointment, viz.: the very great complexity of the industry. The numberless varieties in the number, location, pitch and quality of the veins, in the impurities which they contain, the character of the roof, the amount of water, the quantity of inflammable gases, and other incidents to mining, produce a condition in which no two collieries are substantially alike. A similar complexity characterizes the variety of the occupations of employes hired by the day or month, nearly every colliery showing one hundred or more different varieties of occupations varying in the age and skill required and the character of the work to be performed.

The recognition of this complexity is of the utmost importance in dealing with the primary questions at issue before the commission. In industries employing but few

varieties of labor performing substantially similar work, it is comparatively easy to establish uniform conditions and rates of pay. In this industry it is practically impossible, and the favorite method of filing demands for increases in wages by the imposition of a uniform scale and the raising or lowering of the rates of that scale from time to time, as the condition of business warrants, is utterly inapplicable to this business; and it is safe to say at the outset, and the evidence must satisfy the commission of that fact, that no uniform horizontal advance in the wages for all of the employes of the various companies and at the various collieries can possibly be made which will do anything like substantial justice. This peculiarity of the industry was forcibly called to the attention of the representatives of the mine workers at the outset of the present contention, in the letter of Mr. Baer, February 18th, 1902, in which he says:

"In the judgment of the companies I represent, it is impracticable to form a wage scale for the whole anthracite region. The mining of anthracite coal is entirely different from that of bituminous coal. * * * Each colliery in the anthracite region, by reason of the peculiar nature of the veins—their pitch, water conditions, depth and the quality of the coal and its accompanying impurities (which vary in each colliery, sometimes amounting to two tons of refuse to one ton of merchantable coal) is a problem by itself, and it is not possible to create a scale of wages covering the whole anthracite field which will be just to the operators and to the mine workers."

The same sentiment, in other language, was expressed by letters of other operators at the same time, and has been repeated over and over again in the discussions before the Civic Federation in communications to the Commissioner of Labor, and elsewhere.

The payment for coal mined was from the beginning made upon a contract system; and that contract system has been the growth of years of experience and of mutual

conference and consultation between the men and their employers. I shall recur to that later in my argument, and will not dwell upon it now.

I ask your attention to the fact, proven in the case and undisputed, that there was no considerable strike in the anthracite coal regions for something over twenty years prior to 1900. There were isolated disturbances affecting a part of the region, individual collieries or a group of collieries, but anything like a general disturbance of the relations between the employers and the employes was unknown during that period. According to the testimony, the men were contented and their relations with their employers were cordial and friendly.

I wish to read from the communication of President Olyphant, of the Delaware and Hudson Company, to the Commissioner of Labor during his investigation of the strike:

"I was only going back a little to say that in the strike to which Mr. Baer alluded, in 1876, the wages in the Wyoming region were different from those in the Schuylkill region; one was a basis and the other a fixed price per ton. We had twenty-three years of perfect peace—nothing to trouble us in our minds anywhere. Throughout that time we adhered to the rate of wages paid, no matter what the condition of trade was. In our company we passed years when we did not come anywhere near making our fixed charges; but the men had their wages all the same. When we came on toward this strike in 1900 the great hue and cry was that the anthracite miners had been getting no more than they had received before, while in the bituminous and iron industries the wages had been raised; though in both these industries wages had been carried to the lowest point that men could stand, and we had never in that region given one cent less than we had agreed at that time. This was the condition when these men came in upon us."

That is, during the long period of twenty-three years

there had been a uniform payment of adequate wages to the miners, independently of whether the companies made money or not. During that period several of the larger coal corporations were in the hands of receivers for a greater or shorter length of time. Some others narrowly escaped the same fate, their stocks going down to a very low figure. During that period there were times of great commercial depression, when, all over the country, mills and mines and operations were idle, and when the prices of commodities, coal included, went down to the lowest possible point, and when, as is here stated, the price of coal did not pay the fixed charges of the operators. But during that time there was no diminution of the price paid for labor.

This statement of President Olyphant's receives a remarkable confirmation in the testimony given by Mr. Mitchell before the Industrial Commission immediately following the strike of 1900, in Volume 12, page 700, where he says:

"For many years efforts have been made by the United Mine Workers' organization to organize the anthracite miners; but so bitter was the antagonism among the men that we were unable to succeed, and as a consequence it became obvious to the officers of the United Mine Workers that conditions of employment could not be improved unless, through a strike, the miners should be aroused from their lethargy."

Please substitute for "lethargy" "contentment," which is in that connection a synonymous term, and you may substitute Mr. Mitchell's statement for Mr. Olyphant's.

In 1899 what Mr. Olyphant refers to as "these men coming in upon us" occurred. The United Mine Workers, an organization originally formed in the bituminous region and operating there for a long time, began the effort to organize in the anthracite districts. According to Mr. Mitchell they met with serious opposition. We have had it inferred in the testimony in various cases, in arguments and

in cross-examination by the eminent gentleman from Chicago that the opposition was upon the part of the companies, and that they hated the United Mine Workers and fought to keep them out of the anthracite regions. Mr. Mitchell, however, is authority for the statement that that antagonism came from the men and not from the operators; that they were the ones who had the prejudice against the organization of the United Mine Workers.

But they became organized to some extent; and in 1900 they held a convention at which they formulated demands. I will not take the time of the commission to read those demands. They cover a considerable space. But it has never been estimated that the granting of those demands would increase the cost of mining coal less than fifty per cent., and the operators have always claimed that it would have resulted in an increase of at least seventy per cent. They consisted, briefly, in the abolition of the sliding scale, the reduction of the price of powder, the increase of wages of all classes of company hands, and a uniform scale in the three different districts, differing in the districts, for the mining of coal—seventy-one and a half cents per ton of 2240 pounds in the First district; I do not recollect what it was in the others.

These demands were formulated; and they were communicated, in the fall of 1900, to the operators in the name of the United Mine Workers of America. The demands being refused, a strike was called in September, 1900. Upon the same page of his testimony before the Industrial Commission which I have just quoted, Mr. Mitchell, with a somewhat cynical air, as it seems to me, states that at that time they had but eight thousand members of their organization in the anthracite district, while the operators claimed to have information that they had only fourteen—he considering it quite a point in his favor that he could show that they had hardly more than half as many as the operators themselves thought they had. Eight thousand organized

miners constituted about six per cent. of the mine workers of those districts.

In the name of those eight thousand, six per cent. of the mine workers, Mr. Mitchell and the district presidents issued this order:

"You are therefore hereby notified that the application of the anthracite miners to strike in accordance with the laws of the United Mine Workers of America has been endorsed; and, in accordance with this endorsement, all the miners and mine workers of the anthracite coal region, whether members of the United Mine Workers or not, are instructed to cease work on and after Monday, September 17th."

The presumptuousness of such an order, in view of the contention which is made here that no man has a right to work when his fellows are striking, because the majority rules! That is the only basis upon which that pernicious theory is attempted to be defended here for a moment, that the majority rules; and when the majority says "strike," everybody must quit. And here six per cent. issue an order that all must stop, whether members of the United Mine Workers or not!

The strike lasted twenty-three days and was compromised, as the record shows, at the dictation or request or interposition of certain gentlemen prominent in national politics, who feared that the continuance of the strike would interfere with the prospects of the party with which they were identified. We are not interested in that.

But the strike was characterized by the marching of armed bands from one section of the country to another. The miners did not all stop at once, a good many of them kept on, some of them worked all through the strike, but there were frequent riots and the militia was called out at Shenandoah as it was in the last strike. The result of the strike was an immense impetus to the organization of the miners into the United Mine Workers, and it was recognized

and freely stated, that it was only a preliminary skirmish to a more determined struggle which should follow in the future, having for its object the forcing upon the operators the recognition of and dealing with the union. It was easy to persuade the miners that they had already obtained advantages from this organization by a raise in wages, and other methods which have become familiar to the commission through the evidence, were used to secure their membership, and so they were very generally and largely organized.

The next step was taken in the convention of the three anthracite districts in Hazleton in March, 1901. At that convention, the minutes of which are here, the old demands were in a measure re-asserted, although they were not definitely formulated. A resolution was there introduced to telegraph to the coal operators requesting them to meet the representatives of the Mine Workers to discuss a wage scale. An amendment was introduced substituting for the word "request" the word "demand," which was adopted, and the telegraphic demand was issued, twenty-four hours notice being given of the time and place when they were to meet. This demand was not complied with and for some reason or other nothing further was done toward enforcing it during that year, but prior to April 1st, 1901, the operators posted a notice that the wages then in force and which had been settled upon by compromise in 1900, should continue for another year.

Then came the Shamokin convention of 1902, at which the demands of the miners, three in number, were definitely formulated, and were communicated to the operators, with an authority given to the officers to seek the intervention of the Civic Federation to reach an adjustment, if that were possible, and if not, with authority to call a strike.

There were long and protracted hearings and consultations between the representatives of the United Mine Workers and the operators before the Civic Federation. They

occupied several weeks. They were as full as anybody desired that they should be. The United Mine Workers appeared there as plaintiffs against the operators, formulating certain demands and requiring that they should be granted. The industrial branch of the Civic Federation which heard the discussion did nothing, recommended nothing, decreed nothing, settled nothing. If that is anything in the usual methods of judicial procedure, it is a decision against the plaintiffs or the claimants. If it had been made plain to the Civic Federation and its industrial branch that there was real merit in the claims of the miners, it is to be presumed they would have in some way said so. Their saying nothing, if it counts for anything, counts in favor of the operators.

THE CHAIRMAN: Was their not saying anything in any wise due to the attitude of the operators?

MR. TORREY: I think not. I expect, however, Mr. Baer will be able to elucidate that matter much more clearly than I, as he was present at those discussions and I am only trying to make a general opening.

COMMISSIONER CLARK: Do you know of any instance where the industrial branch of the Civic Federation have assumed to express any opinion on the merits of an industrial controversy, unless the submission was agreed to by the parties?

MR. TORREY: I do not, sir, but I assumed that the appearance and full discussion of these matters before the industrial branch of the Civic Federation might give them some power to say something about it. There was no written submission to them, but the matter was certainly taken up before them, I presume, for the purpose of securing their good offices in bringing about a compromise. So far as I know nothing was done.

The climax was reached in a telegram from Mr. Mitchell to the operators, in which it was suggested that the differences be arbitrated through the Civic Federation defi-

nately, or that they be submitted to Archbishop Ireland, Bishop Potter and one other to be selected, and the answers of the presidents to the suggestion with which you are familiar. Then came the order to strike which went into effect upon May 12.

I think it best perhaps at this time in the order of argument, to refer to the lack of discipline which existed in the mines during the period which intervened between the two strikes. The record is full of evidence of that lack of discipline. It is hailed by the miners as an evidence of independence. The commission will be able to discriminate, I am sure, between manly independence of one person contracting with another, and insubordination upon the part of employes against their employers. The cases of manly independence have not been presented here, it has been the cases of insubordination. Is it called independence when a small boy driving a mule defies the driver boss, or the mine boss, and says that John Mitchell is his boss, and not he? Are these cases where the methods of the carrying on of the business in their most essential and elemental respects are taken up by individuals and they say they will do this, or they will not do that? Mr. Roberts, in his book, says there were a good many evils growing out of the union arising from this lack of discipline, and I think it is Father Curran who says something to the same effect upon the witness stand, that there were a good many petty strikes arising from lack of discipline.

I will not weary the commission by citing at any length the instances of this. It is traceable directly to the organization of the union and to the assurance which was felt after the strike of 1900 (because it did not occur before that), that some support would be given by the union to those who defied their employers. It will be argued upon the other side that some of these petty strikes were settled through the union. That is true in many cases, but the fact is, that there seemed to be no disciplinary control upon the part of the

union of its members by which the differences which they had with their employers would be taken up before a strike; but the mule drivers, the heading men, the miners, and everybody else seemed to have the right to go out on strike first and settle it afterward.

Again they say here that was because they had no contract. But they had contracts. Mr. Mitchell himself says that there was no difficulty in having friendly conferences with mine officials by their employes at any time during the period between the two strikes. It is the universal testimony that their committees were freely received, whether they were appointed by the union, or whether they were appointed by the employes independently of the union. So that the general contract which each one had by himself to work for his employer, connected with the fact they were organized together, and their employer could be met as an organization, was a sufficient basis upon which to establish negotiations for a settlement of grievances, or differences of opinion, without the resort to a strike first and a settlement afterward. A written contract would give no further validity to the relationship which existed between them. There was the readiness of the employer to treat with his employe in any capacity in which he came, in any form in which he came, and the right of the employe to go to his employer at any time. I say, for the purpose of establishing that kindly feeling which is now so much sought after, it would have been wise if the local organizations had adopted that policy of attempting to treat directly with their employers, to meet them frankly and fully and to have condemned and repressed these petty strikes which became so frequent in the region and such an injury to the business.

This strike began on the 12th of May. The first war measure was the calling out of the firemen. That occurred quite promptly on the 20th of May. The order was issued, and I think it important for this commission to clearly understand something about the position of the engineers,

pumpmen and firemen in connection with this industry. They are a more intelligent class of workmen than the ordinary mine worker. They are skilled workmen, with the exception of the firemen, having to do with machinery and that sort of thing, the firemen being regarded, as the testimony here shows, as apprentices to the engineer's employment. The engineers, pumpmen and firemen, prior to 1900, had a separate and independent organization of their own. It was, like the United Mine Workers, affiliated with the Federation of Labor. They had their own charter, their own union and they dealt independently with their employer. Therefore, in the strike of 1900 the United Mine Workers had no jurisdiction to call out the engineers, firemen and pumpmen, and they can claim no credit for not having done so. Desirous of securing complete control of every branch of the industry connected with anthracite mining, immediately after the strike of 1900, in December of that year, at the meeting of the American Federation of Labor, upon the United Mine Workers' initiative, the charters of the engineers, firemen and pumpmen connected with the anthracite industry were revoked, or a decree was made that they should be revoked and the men compelled to join the local unions of the United Mine Workers at the mines where they worked, losing their identity in the heterogeneous mass of boys, foreigners, and more ignorant day laborers, and obliged to abide by any decree which they might make.

In July, 1901, the firemen had a strike of their own before their charters were revoked. They struck for just what is now asked for them, an eight hour day. The attitude of the United Mine Workers toward them is very significant in view of their hatred of scabs. It is in evidence that the United Mine Workers of America, through their own organization, offered to and did fill the places of the striking firemen who had gone on strike for this precious eight-hour day to relieve the terrible burdens which they were bearing.

MR. DARROW: What evidence do you refer to?

MR. TORREY: I will give you a reference. First on the cross-examination of Mr. Mitchell, on the 19th day, page 2,617, the communications which passed between the United Mine Workers' officers and the officers of the Firemen's Amalgamated Association, I think it was, contained this statement. The first request by the firemen of the United Mine Workers was this: "Will you withdraw all men of your organization from our positions, if the strike is declared off?" The answer was "Yes."

The second proof of it is in the brief testimony of Mr. Duffy, the single District President to appear as a witness, where he says:

"As president of the District, I went to the firemen that had served notice on the companies they wanted an eight-hour day and only gave ten hours notice, and I went in behind the stockade without permission and served notices on them firemen, if they quit work, that our union would put men in their places, and to wait until we was looking for something ourselves. We had to go to Wilkes-Barre to a convention and force these men back to work, and the promise I made there, when we was looking for something ourselves, that then we would consider their case, the case of the firemen and pumpmen of our region."

THE CHAIRMAN: I do not understand exactly what Mr. Mitchell said about it.

MR. TORREY: I referred Mr. Mitchell to a series of communications which passed between the officials of the United Mine Workers of the First District, I think it was, and the officials of the Amalgamated Association of Firemen, who were then on strike and the first question that the firemen asked of the officials of the Mine Workers was, "Will you withdraw all men of your organization from our positions if the strike is declared off?" The second question, if I recollect right, was—

THE CHAIRMAN: What was the answer to that?

MR. TORREY: They answered "Yes." The offi-

cial of the mine workers answered they would withdraw their men from the positions of the firemen.

MR. DARROW: It was a strike that the United Mine Workers did not approve of.

MR. TORREY: It was a strike the Mine Workers did not approve of. The answer was yes, they would withdraw them, which was an admission their men were taking the places of the firemen.

MR. DARROW: There is not any doubt about that.

MR. TORREY: The testimony in numerous places shows that during the last strike at individual collieries agreements were made to grant the steam men an eight-hour day, but even there they were not permitted to work. Some excuses were made for this. For instance, one colliery of the Delaware, Lackawanna and Western, Mr. Mitchell was asked about that in particular, and he said "the reason we did not permit those men to remain at work eight hours per day was because the same company refused to permit us to work eight hours a day at their other mines. We do not permit one company to make a special arrangement at one of their mines to let the men work eight hours a day and at another one of their mines refuse to permit them to work eight hours." That is one specific instance, and the Clear Spring colliery is another. It is shown in the evidence that an effort was made to grant an eight-hour day to the firemen and other steam men there for the purpose of protecting the property, but upon one pretext and another the permission was refused.

MR. DARROW: They refused it to the engineers, did they not?

MR. TORREY: I think so, yes; possibly.

MR. DARROW: I am sure that is right.

MR. TORREY: You mean at Clear Spring?

MR. DARROW: Yes, they were willing to grant the firemen, but not the engineers.

MR. TORREY: That may be so. The pretext is made that this calling out of the firemen was the generous presentation of an option to the operators that they could protect their own mines by granting the request. It strikes us as somewhat similar in its character to the option which is given by the highwayman to the traveler, to save his life by giving up his purse. It was a clear case of intimidation. It was used for that purpose and intended for that purpose. The granting of a portion of the requests and demands of the miners would have encouraged the continuance of the strike in such a way as to give very great force and strength to their claims. It was refused and a very large proportion of the steam men in the collieries throughout the region, particularly in the First district, stayed at their posts. I shall only refer to the communications which passed between a large body of the firemen of the Delaware, Lackawanna and Western, and the United Mine Workers, in which they recited their grievance in having their charters taken from them, and petitioned for the privilege of remaining at work, which petition was summarily refused.

THE CHAIRMAN: You could not characterize the action of the firemen in demanding eight hours, unless they followed up their quitting work by the prevention of others from taking their places, that is, you could not say that they would flood the mines, unless they followed up their demands by the prevention of others from taking their places.

MR. TORREY: I would be very glad to reply to that suggestion. In the first place, the firemen did not make the demand. The United Mine Workers of America made it for the firemen. In the second place, the United Mine Workers of America, as we contend, did follow it up with a deliberate, systematic and unlawful attempt to prevent anybody else from working in their places, and so to flood the mines.

MR. DARROW: Are you quite right in your first

proposition? The second, of course, is a matter of argument.

MR. TORREY: Yes, sir, I am; because the order that the firemen should go out unless they receive an eight-hour day, the firemen and other steam men, was issued from the headquarters of the United Mine Workers and was signed by John Mitchell, Nicholls, Duffy, and Fahy as the officers of the organization.

MR. DARROW: Were they not then members of the United Mine Workers?

MR. TORREY: They were members.

MR. DARROW: They had dissolved their other organization.

MR. TORREY: Yes, their other organization had been dissolved, but I say the demand was made by the United Mine Workers.

The next step in the process of enforcing the strike was the calling of a national convention of the United Mine Workers. That has some pertinency and relevancy to this issue in connection with the oft-repeated allegations of the solemnity and binding character of the contracts of the United Mine Workers. I wish very briefly to tract the history of that call. During the Hazleton convention, on May 16, I think that was the time when the strike was called—you will remember that the strike was really called by an order of President Mitchell issued on the 10th of May, in which he directed the men should go out on the 12th of May, and a convention should meet in Hazleton, to determine whether or not there should be a strike, on or about the 15th or 16th of May—during that convention Mr. Mitchell issued the following statement:

“At this morning’s session the convention petitioned the national officers to issue a call for a national convention of all miners employed in the United States, for the purpose of considering the situation in the anthracite fields. If the

desire of the anthracite miners is sustained, a national suspension of coal mining will be inaugurated."

This statement was made with the full knowledge that a large proportion of the bituminous coal mining industries were governed by contracts which did not expire until April following, nine or ten months away.

Pursuant to this request, on June 19, when the strike had been going on a little over a month and when no sufficient apparent progress was being made, a call was issued for that convention to meet July 17, nearly a month away, for one purpose and only one, "To consider the advisability of inaugurating a national suspension of work."

It is impossible to read these two statements, with no qualification whatever in them, so far as the record shows, without coming to the conclusion that it was deliberately contemplated by the officers of this organization, that for the purpose of winning in the anthracite coal strike, a national suspension of work would be called, if necessary, even though it involved the violation of contracts which were then in existence.

I shall not attempt to review the course of the strike, or what was done in it. It was kept up from time to time by encouragement from one source and another. It is a remarkable fact that those complex conditions and situations, which it has taken this commission weary months to consider, there was hardly a publicist or philanthropist in the country who did not consider himself capable of settling for all time on the investigation of a few hours. The public press was full of the deductions and conclusions of those who had made this brief investigation and who were ready to file their decree.

The strike went on until the situation became critical. The winter was approaching and it was evident that even a few more days' continuance of the strike would bring on a coal famine which would be fearful in its results. In that situation the coal operators issued their communication to

the public, which is usually called in this hearing, the operators' submission, and which is the basis for the appointment of this commission. It is the only warrant for any action of the commission, it defines and limits the powers of the commission and it is important that it should be clearly stated and clearly defined in order that there may be no uncertainty upon that. Those portions of the communication which constitute the submission are in the following language:

"They (the operators) therefore, re-state their position: that they are not discriminating against the United Mine Workers, but they insist that the miners' union shall not discriminate against, or refuse to work with, non-union men; that there shall be no restriction or deterioration in quantity or quality of work, and that owing to the varying physical condition of the anthracite mines, each colliery is a problem by itself.

"We suggest that a commission be appointed by the president of the United States (if he is willing to perform that public service), to whom shall be referred all questions at issue between the respective companies and their own employes, whether they belong to a union or not, and the decision of that commission shall be accepted by us.

"It being the understanding that immediately upon the constitution of such commission, in order that idleness and non-production may cease instantly, the miners will return to work, and cease all interference with, and persecution of, any non-union men who are working or shall hereafter work.

"The findings of this commission shall fix the date when the same shall be effective, and shall govern the conditions of employment between the respective companies and their own employes for a term of at least three years."

The questions at issue referred to in this submission, must be held to be the demands of the Shamokin convention as communicated to the operators. These demands as com-

municated to and stated by the Commissioner of Labor in his report to the President, are these:

"First—That there shall be an increase of 20 per cent. to the miners who are paid by the ton—that is, for men performing contract work.

"Second—A reduction of 20 per cent. in the time of per diem employes, resulting in an eight-hour day.

"Third—That 2,240 pounds shall constitute the ton on which payment is based for all coal mined where the miners are paid by weight, and wherever practicable."

These three issues then are before the commission, with the qualification contained in the operators' submission, that their determination shall not in any way affect the employment, or status of non-union men, and the further limitation therein expressly provided, that each colliery is a problem by itself, leaving the commission free to make different terms and varying awards with reference to the several operators in their different collieries.

The further demand which is made in the record I shall take up later. The discussion of these demands will be the general subject of the comment of counsel who will follow me. I will very briefly refer to them, especially as they relate to the case of my own client, the Delaware and Hudson Company, and in the first place, I think I should allude to the paucity of evidence to substantiate these claims. It has been frequently referred to and I need not dwell upon it.

The rules of evidence seem to have been reversed in this case and the burden of proof placed upon the defendants. There is, I venture to say, no one of the reasons given for the demands of the miners which has been satisfactorily proven by affirmative testimony. The bulk of the testimony, so far as it really relates to the demands in this case consists of the vague and general theories and impressions or opinions of Mr. Mitchell, Dr. Roberts and Mr. Gompers. The rest of the testimony of the miners is made up of "hard

luck" cases, which are not unusual in any industry, of alleged cases of discrimination since the strike ended, of some other testimony with reference to changes of rates of mining, or unjust treatment in particular cases in particular veins of particular mines. But as to any definite clear statement of the condition of the miners or what they got or what they needed before the strike, the evidence is strangely blank.

Mr. Mitchell several times in his examination and protracted cross-examinations stated that whatever knowledge he had of the conditions of the mines, the rates of wages and the conditions of labor were derived from the district presidents of the three districts. He stated that he lived in the West, was very little in the anthracite regions and not at all familiar with the methods of mining, having been in an anthracite mine but once in his life; and that he necessarily depended upon them for the information which he gave to the commission, which was admittedly indefinite, but would be made more definite, as was reiterated over and over again, by the testimony of those presidents who should follow him.

We have waited for three months in vain for the appearance of these district presidents. They have attended the meetings of the commission with great regularity; they have made suggestions to their counsel, and have marshalled the witnesses, but they have persistently denied the commission the benefit of all the light which they presumably could have thrown upon the questions at issue and the justness of the demands which they originally formulated and for which they are responsible. We must have our own views as to the reasons which actuated the complainants in keeping these men off the stand. Again and again, their connection and complicity with the reign of terror which characterized the strike, has been brought out, but save in one instance they have made no effort to contradict the testimony. Papers in the nature of safe conduct, such as might be issued in time of war, to permit a person to pass through the lines, have been issued under the hands and

seals of the union, and otherwise it has been made to appear that while ostentatiously counselling peace, they were fomenting lawlessness and organizing anarchy. We can only conclude that the fear of cross-examination upon these subjects has kept them from coming forward to give any information which they may have for the benefit of the commission.

It is no trifling matter. It is an immense and momentous responsibility which men take upon themselves when they inaugurate and launch upon a community such an industrial war as took place last summer. It should not be done without the fullest knowledge and the greatest certainty that the facts upon which that war is based are correct, and those who take the responsibility of drawing the sword should be willing and able before a tribunal of this kind to justify their action.

The first demand of the miners is for an increase of 20 per cent. upon the prices paid during the year 1901 to contract miners. The first observation upon this demand is that it is cut in two by the table presented by Dr. Roberts in which he shows that the production of coal per miner in 1901, as I recollect his table, was 10 per cent. higher than the average for ten years. In his testimony he stated it was not fair to base any increase of wages upon the production of a phenomenally prosperous year. That means either one of two things: Either the demand ought to be cut in two, if it is intended to ask for an increase of 20 per cent. upon the average year, or else the miners have deliberately selected a phenomenally prosperous year for the purpose of making a nominal demand for 20 per cent. increase which would really amount to over 30 per cent., if it were estimated upon a fairly average prosperous year.

I shall not review fully or exhaustively the reasons given for this demand, except to say that it would not necessarily follow, if it were true that the rates of mining for bituminous miners were higher than those of the anthracite

miners, that the anthracite miners must therefore have an increase in wages. There are some differences in the industries which would justify a higher wage in one than in the other. But we venture to state that there is absolutely no testimony from the beginning to the end of this record, unless it has gone in in some tabulations collected, I know not how, and that I have not seen, which would justify the impression that bituminous miners are better paid in an annual wage than the anthracite miners. On the contrary, my own impression from the tables which I have seen is that just the opposite is true, that the bituminous miners earn less per annum on the average, either selecting the grand average of all bituminous mines or selecting the average of any one of the states, even those which are under contract with the United Mine Workers, and comparing 1901 with 1901; that they receive less pay per annum than the annual pay of the anthracite miner.

Neither has there been any proof that the present rate of wages is lower than that paid by other occupations requiring equal skill and training. We had one or two masons or carpenters upon the stand to testify what they get per hour and what they get per annum, but they certainly could not be accepted as specimens of any great class. There is no testimony furnished to show the fact here stated, and I think that the tabulations which have been gathered by Mr. Newcomb, and perhaps through the commission itself, will indicate that, similar training and intelligence being taken into consideration, the anthracite miners are as well paid as any other occupation in the neighborhood where they work. There may be isolated cases in large cities, where the expenses of living are very large, higher than they are in the anthracite regions, where some small classes of labor get more pay. I do not know that even that is true; but if it were, it would be no criterion by which to fix the anthracite miners' wages.

As to the necessity for an increase of pay because of

the unhealthfulness of the occupation, I think we have admitted—we are ready to admit—that it is one of the dangerous trades. We do not admit that it is the most dangerous trade. Indeed the statistics and the rates of life insurance and accident insurance show that it is not the most hazardous. But that it is one of the hazardous trades, and a very hazardous trade it would be idle to deny. We do most strenuously deny, however, that it is a particularly unhealthy occupation. I think the most convincing testimony upon this point was that given by Dr. Kellar, who gave the number of industrial insurance examinations which he had made of miners and mine workers, and he showed the very small percentage of them (about 6 per cent., if I remember correctly) who were rejected because of physical infirmities. Then, too, we have the rates of industrial insurance, which do not class them as extra hazardous with reference to health, whatever may be true of accidents.

I at one time requested the commission to particularly observe the mine workers who were following one another in long procession upon the stand, union miners and non-union miners, day after day, hundreds of them. You saw them of all ages, men who had worked forty or fifty years in the mines and the younger men. They must have impressed you as a stalwart, strong, hearty, well-fed and vigorous class of men.

The very exhibit of these men themselves is stronger testimony than any which we could gather from statistics with reference to their healthfulness. We have also the testimony of a great many men who have worked long in the mines and who prefer it to outside labor because of the equibilty of the temperature and the uniformity of the conditions under which they work.

I shall not take the time or burden the record with particular statements of the averages of earnings of any of the companies. They are all tabulated and before the commission. Statisticians will differ somewhat in the manner in

which they are to be treated. It is fortunate that the commission by its own decree procured that they should be submitted in somewhat similar form. They are classified as to their earnings, whether large or small, and they are classified as to the number of days worked. I myself am of the opinion, in which I seem to agree with the counsel upon the other side, that the only fair way to treat statistics of that kind is to exclude the very low and the very high and take something like 60 or 70 per cent. of those between the extremes and deduce conclusions from them. I think that all reputable statisticians throughout the country have adopted that method.

It is not unfair to consider in connection with this demand the hours of work. I think I should rather err upon the side of the miners if I said that the time taken as a whole would show that the miners did not average over six hours work throughout the entire anthracite field, giving them plenty of time for the leisure and the education and improvement of their families which they seek.

It is to be remarked also that the decree of this commission must continue for a period of at least three years. I do not know whether the commission contains any prophet of sufficient astuteness to be sure what will happen within the next three years, but it is certainly fair to take into consideration the uncertainties of business and the possibility if not probability, that changes will take place which will materially affect the position of the parties, and that any decision upon these subjects should be made with reference to averages and not to present conditions.

The general increase of wages in other industries during this prosperous period of our history may have some influence upon the minds of the commission, though it does not appear fully upon the record. We have a right to say that the increase of 1900, which several witnesses said they were satisfied would have been voluntarily granted by the operators before this time if there had been no strike of

1900, as other increases have been granted by railroads and other corporations—that that increase represents the increment upon the stable profits arising from the improvement of the business which employes of other industries have received.

The second demand is for the eight-hour day for the company men. The testimony of the witnesses and the tabulations which we have filed show that as a rule the breakers do not average more than eight hours a day—somewhere between seven and eight hours a day; so that all arguments based upon the unfairness of keeping men at constant toil for long periods of time are inapplicable to this situation. It resolves itself simply into a question of advance of wages. There is no hardship imposed upon the anthracite miners and mine workers by excessive hours. They have the leisure which they seek for and which they say is essential to the maintenance of the American standard of living, without the reduction of the hours by the decree of the commission, so that it is substantially simply a request for higher wages.

Considering that the great majority of the company men are doing merely manual labor of the plainest sort, manual labor which can be done by men almost immediately after their arrival in the country, or by young men who are unfitted as yet for any skilled labor; we think the tabulations which have been filed by this and other companies show a very fair and adequate remuneration for the work done, and indicate that those wages are upon a par with those in other industries requiring the same skill and training.

The third demand is that coal be weighed, that sixty cents be a minimum price per ton, and that 2,240 pounds be the ton. There are two or three things which we have practically admitted among ourselves with reference to this demand which eliminate from it perplexing questions. The first thing that we have admitted or agreed upon is that this

is a part of the first demand, and that it does not involve any further advance in wages than is included in the first demand; that whatever new method might possibly be adopted for the payment for coal mined by contract, the rates for it should be re-adjusted so as not to make a further advance in payment or price. Therefore that practically amounts to an abandonment of the sixty-cent minimum; because if it should be shown that anywhere less than sixty cents was paid after any advance which the commission might make under the first proposition, the further advance could not be granted under the third demand unless the commission intended to discriminate between one mine or one vein and another.

The second thing which we have practically agreed upon is that there would be no fairness in paying the miner for 2,240 pounds "run of mine," or in the mine car; that the demand is intended to mean 2,240 pounds of clean coal, marketable coal, which can only be ascertained after it has gone through the breaker and is ready for shipment to the market.

The Delaware and Hudson Company pays some of its miners by weight and some by car; but there is no substantial difference between the two methods. The ton is a miner's ton, arbitrarily fixed by agreement between the parties. They are different units, but they are not units such as are sought in this demand, either one of them. They are measures of the quantity of coal which each miner sends out, and are purely arbitrary.

It ought to be recognized in the consideration of this demand, and we have the right that the commission should so recognize it, that the miner has no interest or title in the coal; that the commercial transaction which is being considered is not the purchase of a commodity, but is a payment for service; and that no system is better than another if each affords uniform and adequate payment for the work performed, as uniform as can be secured. And it is just this

that we claim with reference to the systems which have been in vogue for so long. In view of the fact that the cars vary so much in size; that the allowances are so different in different veins, for rock and for other impurities which are taken out by the miners; in view of the fact that the miner's ton is different in different places, and that some places pay by the yard; I think the commission will be astonished to find how great uniformity exists, or how nearly alike the miners are being paid in different districts and in different collieries, thus establishing the fact that the whole tendency and effort has been, through these seventy years of mining, to accomplish about the same result, whatever the method that was adopted to accomplish it.

The present methods, varied as they are, are the result of a long evolution, having for its object and end the adequate and practically uniform payment for the same kind of work. These miners consult with each other, and always have done so. Those of one mine consult with those of another mine; they compare notes as to what they are getting, what the size of the car is, or what the weight of the ton is. They have their organization, and talk it over in their organizations; and I venture to say that it would not be one week after any change was made which materially diminished the earning power of a miner in Carbondale below that of one in Wilkes-Barre before the first would be protesting against it on that ground. They are shrewd and careful, and they are on the lookout for these allowances and for these extras which will bring them up to a practical uniformity. And that uniformity having been reasonably accomplished by the methods which are now in vogue, and there having been no agitation with reference to this subject until, as one of the witnesses for the miners said, about two years ago, which is contemporaneous with the arrival of the emissaries from the bituminous district who were accustomed to a uniform method of mining and a uniform scale of wages, and who desired that it should be introduced here

for the apparent purpose of making it possible to make horizontal reductions and increase of pay—I say until then there being no evidence of any dissatisfaction on the part of any particular class of miners with the method which was adopted for them, or any particular preference for one method over another; no change should now be made. The end to be obtained, reasonable pay for reasonable work, was all that they cared for; and that being accomplished, they were content.

We say that there are practical difficulties. They are very clearly recognized by two of the miners' witnesses, Dr. Roberts and Mr. Haddock. I shall not quote their testimony in full; but they recognize and mention the difficulties which would arise in connection with any effort to establish a uniform system. Mr. Haddock, I recollect, upon being asked by Mr. Reynolds whether it would be possible to have a uniform method of weighing coal where there were different kinds of impurities and slate and clay in the veins, said that it clearly would not.

But the most important consideration, as it seems to me, in connection with this is that it is practically impossible for this commission to re-adjust all the rates in the various veins in the anthracite mines and the different mines in the anthracite region in such a way as to give satisfaction to anybody. Just contemplate it for a moment. Of the hundreds of different rates which are now paid, this commission must change every one, or somebody must, in order to accomplish the purpose here desired of reaching a uniform standard without changing the prices of the mining. The miner is naturally suspicious—suspicious that he is being defrauded. He is so because he—that is, the ordinary miner—has not the intelligence of his employer. It is characteristic of those having the lesser degree of intelligence to be suspicious, in any transaction, that they are being overreached by those who are more intelligent, more experienced and sharper than themselves. And I venture to say

that any rates which might be re-fixed by this commission in pursuance of this third demand, unless they clearly and certainly increased the wages of the miner, would be regarded by him as having diminished them, and would cause trouble.

There are two qualifications in the submission which affect the powers and the duties of the commission. The first one is contained in that part of the operators' letter which says that your determination shall not in any way affect the employment or status of non-union men. I am at a loss myself to indicate to the commission by what form of decree it will be able to properly and adequately protect the rights of those non-union men who are still working and may hereafter be employed in the anthracite mines; and yet it is a matter of so great importance that it should not escape the attention of the commission and they should not shirk the responsibility of doing all that they can to that end.

Whatever of success has attended either of the strikes of this organization or of any other labor organization springs entirely from the force of public opinion which they have been able to gather about their movement, and any decree of this commission I am very sure will have great weight with public opinion in this country, wherever its findings are known. Therefore we look to you for a clear, distinct and forcible insistence upon the recognition of the rights and the protection of the interests of those whom the company now does or may hereafter employ who are not members of the union. Whether the commission in its deliberations can find some completely effective methods by which its decrees may be enforced, I am not now able to state, but if so we should have the benefit of their wisdom and consideration in that regard.

The second limitation is that each colliery is to be considered a problem by itself. I shall not enlarge upon this except so far as to say that the commission's hands are entirely unfettered in that regard, and if there are found to be,

either among the companies themselves or among the collieries of any company, inequalities so glaring and so clear as to require different treatment it is within the power of the commission and I consider it their duty to so treat them, in order that as nearly as possible adequate and uniform justice be done to all.

The miners' fourth demand is that the operators be required to enter into a contract governing the conditions of employment of their employes with the organization known as the United Mine Workers of America.

I think practically all the operators have stated in their replies to this demand that it is not a subject which is within the terms of the submission, and that no decree can properly be entered by the commission in compliance with that demand, even though they should find it wise to do so. That demurrer has never been and is not now waived, but like all demurrers which are overruled, it, in a measure, constitutes a reserved point. Since testimony has been taken upon both sides, the testimony being begun by the miners themselves in their long examination of Mr. Mitchell and of Mr. Gompers in which the character, purposes and the importance and desirableness of this union were expatiated upon, the evidence having been rebutted by a large amount of testimony upon our side, it becomes necessary to argue it even though the point of its actual submission be reserved. More than that, it has a pertinency even to the other points. That is, it has a pertinency to the relations of the employers to their employes. The union is there. The union is operative. The union affects in numberless ways the relations of the two parties to the contract, and so far as its character affects the relations existing between them, it is a pertinent subject for discussion here.

We remark with reference to it, first, that it is a great trust, formed for the deliberate purpose of controlling absolutely all the labor connected with the coal mining industries of the entire country. That purpose is not concealed or

denied. It is stated that it is their purpose to get into the organization every mine worker in the United States, and toward that they are pressing as rapidly as possible. It gives a power to the organization which no organization ought to exercise—a power to tie up the entire fuel of the country.

Mr. Mitchell was asked upon cross-examination if it was not possible that all the fuel should be tied up by such an organization. He says: "It is not impossible in the sense that it could not be done; but it is not at all probable." And again he says: "I think there is no possibility of the entire coal industry being paralyzed, although under our law it is within the power of the board to do it." Therefore the power is recognized, the possibility is clearly admitted, but it is only the disposition of the board and the union back of the board not to do it which is to be depended upon to prevent its being done.

I have referred to the national convention which was called last July, where the threat was clearly held out that it would be done and the purpose evidently for a time at least was entertained to do it. That it was not done is not because the power was not there, nor because the purpose under some circumstances might not be entertained.

I remark secondly that, waiving for a moment the right of the operators to deal with their employes alone, it should be perfectly manifest that any organization of labor in the anthracite district should be absolutely autonomous. The two industries, the bituminous and the anthracite are rivals in a large measure. So far as coal used for steam purposes is concerned, they are active competitors, and that constitutes from thirty to forty per cent. of the anthracite coal—the smaller sizes. And with reference to other coal they are to some extent rivals. That the two rival industries should be both controlled by one organization in which the immense preponderance of numbers, influence and power is upon the side of one as against the other, holds out a threat

that that power may in times of commercial depression, or of very active competition be exercised to the benefit of the one and the injury of the other. This is no idle dream. Since the United Mine Workers obtained a foothold in the anthracite region, we have had a continuous and uninterrupted period of prosperity and advancement. Both the bituminous and the anthracite mines have been run to a degree much more nearly approaching their limit of capacity than ever before, and the market has been growing and increasing. The two anthracite strikes have so depleted the market as to add to the effect of the prosperous era in creating a demand for coal. There has been thus far, since the two districts were under the same organization no temptation to exercise the power which it is admitted the organization has to the disadvantage of the anthracite region. But when we come to a time of commercial depression, when the market will not take more than half of the coal that could be produced, there will come the temptation for those who control the organization, to use it in such a way as to benefit that part to which the majority belong. We assign no immoral motives to anyone for that. It is the natural result of industrial competition. It is the dictate of selfishness which, to a large extent, governs business, and for that reason we urge very strongly that there ought to be this autonomous organization of the anthracite district, if the United Mine Workers are to be in any way consulted with reference to the business.

This seems to have occurred to some one connected with the organization so long ago as 1901, when a resolution was offered in the Hazleton convention, which looked toward that result, although it was incomplete in its conception. "Resolution No. 32:

"Whereas, The best results cannot be obtained by having separate districts in the anthracite region; and

"Whereas, It would tend to continue the present harmonious relations between the miners of the entire region

and promote a feeling of closer fellowship; recognizing more fully the principles of mutual interest by combining the entire region into one grand district with sub-divisions; therefore be it

“Resolved, That we, the delegates representing the mine workers of the entire region approve of the consolidation of Districts 1, 7 and 9 into one grand district, which shall be sub-divided into eight sub-districts which shall be under the jurisdiction of that grand district. The president of each sub-district together with the president, vice-president and secretary-treasurer of the grand district shall constitute the executive board of the grand district.”

This was evidently an effort to consolidate the anthracite industry into one district which would, of course, if it got into that position, become autonomous. The resolution was tabled and nothing further in that direction has been done since then.

The operators have always been ready and willing to meet and deal with their own employes, or their properly constituted representatives with regard to the relations between them. It is very easy to say that means we will govern our own business. It is very easy to say that is a narrow and antiquated method of dealing with labor problems, but it goes a good deal deeper than that. It is a matter which we think is of the very essence of this discussion.

The operators have over and over again stated that they have never discriminated against any of their employes because of their membership or non-membership in any labor organization. Considering the zeal of the miners and their counsel, and the absolute want of any evidence of any general, even particular discrimination against men because of their membership in the union, it seems to me that the commission must be satisfied that it is absolutely true. They have declared it over and over again. But when they are dealing with reference to matters which pertain to their own business, are dealing with the contract between themselves

and their own employes with reference to which no outside interests are in any way involved and with which outside persons have no business to interfere, it seems to me they are perfectly right in saying that they will deal with their own employes, or their properly constituted representatives.

MR. DARROW: Mr. Torrey, may I ask you one question there?

MR. TORREY: You may, anything.

MR. DARROW: Just clear it up as you go along. By their properly constituted representatives they mean their properly constituted representatives who are in the employ of the company, do they not?

MR. TORREY: Speaking for myself, and I think for my clients, I say absolutely no. I say that so far as my own counsel would be followed, and I think it would be followed, I should say that the representative was accountable to his principal and not to the person to whom he was accredited. But the limitation must be made, that the business to be transacted by that representative shall be the business of the person to whom he is sent, and nothing else, not mixed up or confused with the business between some other body and his employes. That the person who comes as a representative should be under no limitations as to the person who he is, except that he should be personally inoffensive as any plenipotentiary must, not inoffensive in the respect of being a person whom somebody does not like, but a person who is inoffensive in his methods of doing business and his recognition of the proper methods of doing business.

THE CHAIRMAN: You mean he should be the real representative of his constituents.

MR. TORREY: Real representative of his constituents who should be the employes and the business which he transacts shall be the business between the person to whom he is sent and the persons who send him. Those are the only limitations I should prescribe. The fact that that has been the policy of the companies is indicated by the fact that

although over and over again they have refused to treat with the higher officers of the United Mine Workers of America, as such officers, that is, as representing some business that covers the whole country and the mining of the whole country, they have never refused to meet John Mitchell, or T. D. Nicholls, or Thomas Duffy, but they have over and over again consulted with them in reference to this business, limiting their consultation only to the business which was in hand, that is, the relation between these particular employers and their employes. The record is full of the statements of long conferences and discussions which negative the narrow construction which has been placed on some of the letters of the presidents, that they mean they will not meet anybody unless he personally is actually in their employ. I would limit the matter somewhat further myself, to this extent, that the miners should not be represented by some outside person in little trivial matters taken up by the foremen. It seems to me it is only when they come up to the more serious and general grievances that it would be necessary for them to call in outside assistance, and that then it would be recognized that it might be necessary for them to find some one of more experience and intelligence than themselves to represent and present their cause to the higher officials.

Objection is further made to the United Mine Workers on account of the purpose and character of the organization. In the first place, it not only admits but it practically forces into its membership, every person connected with the mining business of whatever age and of whatever character. It is in evidence, I believe, that something like 20 per cent. of the membership of the United Mine Workers is made up of boys. Another very large per cent. is made up of ignorant foreigners, a great many of whom cannot speak the English language, and those two together would constitute well on to a half of the whole organization. I say that it is detrimental to any hope that wise action will

be taken, that due deliberation will be given to the action of such an organization, that those elements should be included in its membership and given the full right to vote—although I believe the boys under sixteen years of age have only a half vote.

THE CHAIRMAN: Let us understand that as we go along.

MR. TORREY: Yes, sir.

THE CHAIRMAN: I mean the participation of boys (that is, of boys under twenty-one years of age) in the more serious questions that are presented to the union. Do I understand that boys over sixteen, between sixteen and twenty-one, have a full vote? I recollect some testimony about it, but I do not want to have any doubt about it.

MR. TORREY: That is very clear in Mr. Mitchell's testimony.

MR. DARROW: I understand that they have a full vote over sixteen, and a half vote under sixteen.

THE CHAIRMAN: That will be understood, then.

MR. TORREY: That is very clearly stated in Mr. Mitchell's testimony.

MR. McCARTHY: They do not send delegates to the conventions, and do not participate in the convention debates.

THE CHAIRMAN: I do not understand that entirely. Let us see whether there is an agreement about that matter.

MR. McCARTHY: The boys have locals of their own, in which they have half a vote—all boys under sixteen have half a vote and those over sixteen a full vote; but they cannot go in a representative capacity to any convention.

THE CHAIRMAN: Do they not send representatives to the conventions?

MR. McCARTHY: Well, adults.

THE CHAIRMAN: Yes; but do they not vote? Do

not their votes send representatives to conventions? Is not that so?

MR. DARROW: I guess you had better let us make sure of that.

THE CHAIRMAN: Yes; you had better make sure as we go along.

MR. DUFFY: In all our conventions we have only had one boy.

THE CHAIRMAN: No; you misunderstand me. Do these locals, which are constituted of boys under twenty-one and some of them under sixteen, those over sixteen having a full vote and those under sixteen having a half one, send a representative, an adult representative, to the conventions?

MR. DUFFY: The local is a subordinate local of the senior local; and it is the boys' votes that send the men to the conventions.

THE CHAIRMAN: Yes; but they participate in the vote as to sending a delegate to the convention?

MR. DUFFY: Yes.

THE CHAIRMAN: Although that delegate is an adult?

MR. DUFFY: Yes.

MR. FAHY: Mr. Chairman, in District No. 9 the junior locals are under the supervision of the members of the senior locals. We have a few junior locals—very few of them. At our last annual convention we had one breaker boy delegate. He was the first who ever attended a convention in our district. There was a great deal said about the responsibility of boys, and its possible effect upon the general conditions of the miners; and that was one thing which caused us to pass a resolution providing that we should get a medal for that breaker boy, he being the first that ever attended any of our conventions.

THE CHAIRMAN: Well, I understand that, Mr. Fahy; but I understand, now (correct me if I am wrong)

that all boys under twenty-one who are employed about the mines belong or may belong to the miners' union?

MR. FAHY: They may belong; yes, sir.

THE CHAIRMAN: And that in sending delegates to those conventions in their locals, the boys between sixteen and twenty-one have a full vote, and the boys below sixteen a half vote?

MR. FAHY: Exactly.

THE CHAIRMAN: So that the boys in that way participate in the making up of the convention, by sending a delegate. Now, I understand that those delegates that they vote to send are required to be adults?

MR. FAHY: Not necessarily so, but usually they are; and, as I say, the first breaker boy that ever attended any of our conventions did so last December.

THE CHAIRMAN: And your rules did not exclude him?

MR. FAHY: No; they did not, judge. We got him a medal because he was the first one.

MR. TORREY: More than that, Mr. Chairman, if there be any instructions given to the delegates upon a great question such as a strike, the boys vote upon the instructions as well as upon everything else. I have examined several of the constitutions and by-laws of the organizations, and I find absolutely no limitation upon the right to vote of the boys as compared with the men, except that the boys under sixteen are only permitted half a vote.

We object to the organization, further, because it declares frequent strikes, and they are always accompanied by violence, intimidation and lawlessness. In this particular the organization has come under the supervision of the courts several times. I am tempted to read extracts from cases in which this organization and its principal officers have been defendants in the United States courts; but as I do not wish to take up the time of the commission, I will simply quote the cases, and ask the commission to refer to

them. There is the case of the Renecke Coal Company vs. Wood, 112 Federal Reporter, 477; United States vs. Weber, 114 Federal Reporter, 950; and United States vs. Haggerty, et al., 116 Federal Reporter, 510.

In every one of these cases the methods of the union have been condemned by the courts as characterized by lawlessness, violence and intimidation, and that in connection with the evidence with reference to the two strikes in the anthracite region—

THE CHAIRMAN: Do you mean the evidence tending to show that in those particular cases?

MR. TORREY: In those particular cases, relating to those strikes. The same thing is true of the two strikes which have been under consideration by this commission; and if they have ever had any other strike in which the same methods were not pursued, that fact does not appear upon this record.

It practices and justifies the boycott. It proclaims and enforces the doctrine that no man has a moral right to work when others strike. It repudiates and violates every personal right of non-union men; and while it proclaims the doctrine of uniform wage for the same class of work, it does not always practice it.

There is just one class of employes in the anthracite mine regions who are paid by the United Mine Workers of America, and that is the check weighmen. At the request of the commission the Delaware and Hudson Company filed a report showing the check weighmen employed by the United Mine Workers at every colliery—there are eight or ten of them, I think—together with the remuneration which they received from the union. It ought to be clear without argument that the duties of check weighmen are uniform duties, and that if there is any place where uniform wage for the same class of work ought to apply it would be with reference to the check weighmen. But we find in this list only three who are paid the same rate of wages. Three get

sixty-five dollars a month; one gets fifty dollars a month; two get two dollars for every start. One gets three dollars per day of ten hours, and one gets two dollars and a half a day of ten hours, with an allowance of two days extra per month for night work.

The operators ought not to be compelled to enter into a contract with the organization, because it is irresponsible. It refuses to be incorporated or to take any other method of guaranteeing the fulfilment of its contracts. While admitting the irresponsible character of a large proportion of its members, the boys and foreigners, and while repudiating all responsibility for treating its employers fairly or protecting their property while they are not under contract with them, it insists that contracts shall be entered into for the purpose of evolving a more satisfactory union. In other words, it reverses the ordinary methods of commercial life. Instead of establishing its responsibility in the first instance in order to secure the consent of others to contract with it, it says:

“True, we are not responsible; we are not well organized; but we are in our infancy. Every labor organization began as a mob, as we begin as a mob; and they have been elevated into something better by being contracted with. Therefore, contract with us so as to elevate us.”

We say that the organization ought to clear itself of those qualities, characteristics and methods which make it irresponsible, and which make it unsafe to contract with it, before it either asks us to enter into contracts, or asks you to compel us to enter into a contract with it.

Speaking of these contracts, the evidence shows that there is no constitutional provision in the organization which prevents or punishes for violations of contract. Their chief officers do say that if any local union did violate its contract its charter would be revoked; but there is nothing in their constitution or in their laws anywhere to provide for such a thing, or to provide any tribunal by which it should be determined whether or not they had violated their contract.

There is no provision by which any operator who complained that they had violated their contract could get a hearing of any particular body of men or organization to prove that fact, in order to bring to justice or to bring to terms the local which had violated its contract.

Attention will undoubtedly be drawn to the contract which Mr. Markle had with his employes in 1900. I will not allude to it further than to say that it illustrates the fact that the union not only does not encourage but rather discourages any contracts unless they be made through the main organization. They do not encourage individual locals or the employes of any great company to make contracts with their employers, even temporary and tentative until they can do something better through the main organization. The statement made by Mr. Mitchell at that time, as it is quoted, was that they ought to give up their own personal advantages for the benefit of the great mass of the miners who did not have equal advantages; that is, that they should violate their personal contract with Mr. Markle because the recognition of it had a tendency to defeat the efforts of all the mine workers of the region.

They object to compulsory arbitration. I think it is not a misstatement of Mr. Mitchell's statement before the Industrial Commission to say that he was in the position of the Irishman who approved of the law, but objected to its enforcement. He said that he approved of compulsory arbitration so far as to make it compulsory that a board of arbitration should be selected; but he objected to compulsory arbitration which exercised any compulsion for the enforcement of the decree which that board might register. Everywhere through the testimony, wherever the principles and desires of the union are discussed, they say they do not want any compulsory arbitration.

Where they have entered into contracts there is a loss of one power upon the part of the employers which it seems to me is absolutely essential to the successful management

of any business. That is the power to discharge. These minutes of the interstate convention of coal miners and operators of Illinois, Indiana, Ohio and Pennsylvania for 1902 were offered in evidence, and I desire to read a little discussion between Mr. Sullivan representing the miners and Mr. Taylor, representing the operators.

"Mr. Sullivan: So far as Ohio is concerned, if we don't think a man is worthy we don't uphold him. We never allow a man to be discharged until it is proved that he was guilty of a wrong. If he is guilty the officials will never uphold him.

"Mr. Taylor: Who decides that?"

"Mr. Sullivan: We meet with the officials, and I think they always say we have been fair. But we never allow a man to be discharged unless it is proven that he is guilty.

"Mr. Taylor: Mr. Van Horn, what is the condition in Indiana?"

"Mr. Van Horn: In Indiana, if a day man is not giving satisfaction, nearly all the cases the operators have a right to put him in the mine, mining coal by the ton. They gave him a place in the mine. Then he is working for himself, and they select another day man. If he is doing wrong, we have a meeting—usually between myself and Mr. Penna. In nineteen cases out of twenty we agree. If we can not agree, we leave it to a board of arbitration.

"Mr. Taylor: In other words, the right of hiring and discharging is not in the hands of the operators?"

"Mr. Van Horn: The right to hire and discharge is in their hands, but we reserve the right to see that there is justice.

"Mr. Taylor: There isn't a miner here but knows that it is absolutely false to say that an operator can hire and discharge men when he wants to.

"Mr. Van Horn: What objection would you have to giving a man who is not giving satisfaction as a day man a place to mine coal?"

"Mr. Taylor: I am not objecting to that. But every argument here this afternoon has ended by your side saying that if a man did not give satisfaction we could discharge him. The truth is that if we want to discharge a man we always have to wrangle over it, and finally it is left to the miners' officials to settle. We have not the right to freely hire and discharge men as we see fit."

Another objection which we have to the methods of this organization is that strikes are declared by a bare majority, by a viva voce vote. This gives the widest latitude for appeals to passion and prejudice and to the action of agitators in the unions. All these matters are discussed in the local unions, and it needs no argument for intelligent men to know who will carry the day when a case of that kind is up and the loud, plausible men of the class of the agitator, whom we all know—intense, strong in his feelings—attempts to carry a point against the more conservative and quiet element of a union. I say that it is a reproach upon this organization that when it comes to voting away \$5 of money out of their treasury for some union purpose, it requires a two-thirds vote to do it, but when they want to call a strike it only calls for a bare majority. It is a reproach to the union that when they want to elect a corresponding secretary they must do it by ballot, and when they want to call a great strike they can do it by a viva voce vote, and rush the thing through. I say that in that respect this organization ought to correct its methods before it seeks to force into contractual relations with it those who are unwilling to take those relations.

COMMISSIONER WATKINS: The newspapers have stated that they did change that at the last convention at Indianapolis. Do you know about that?

MR. TORREY: I have a newspaper clipping which states something to that effect very indefinitely, and I would be very glad to read what I have here, subject to correction, at the same time insisting that it is the organization as it was

when this demand was made, which we are dealing with, and not the organization as it is gradually becoming under the suggestions which we have been able to make as to the way they ought to conduct their business, and under the lime light of public investigation.

This is from an editorial in the Saginaw News, January 29th: "The other noteworthy action of the convention is in the modification of the miners' constitution by which the power to declare a strike is removed from the executive board to the organization"—I never advised that, I think I would just as lief trust myself with the executive board as with the hoi polloi in convention—"requiring a two-thirds vote of the entire membership to suspend work. This is placing the power where it belongs."

The union sets itself against and above the institutions and laws of the country and forms a kind of imperium in imperio. It registers its decrees as to personal rights, the rights of contract, and the rights of property and seeks to enforce them by strikes and intimidation and other methods which are familiar to the commission. It registers decrees regulating the relations of persons and the rights of property. It nullifies the law. It criticises and in point of fact, so far as it dares, defies the courts. We have had the criticism of the courts here all through this investigation, the miners saying that they considered that the courts did not deal fairly with the laboring man, saying that the injunction is the most potent weapon which has ever been used to the injury of the laboring man.

THE CHAIRMAN: The courts are not above criticism, Mr. Torrey.

MR. TORREY: That is true; but this organization finds it necessary to criticise all branches of government. I was going on to say that it criticises the police authorities wherever they seek to perform their duty. It criticises the military arm of the government wherever that is brought

into use and it strives by every sort of influence, political and otherwise, to nullify the civil authority.

The extent to which that was done, as developed in this case is quite remarkable, and the connivance of the local authorities with the United Mine Workers is no less so. Burgess Manning, of Olyphant, protested in writing against the sheriff of the county coming into his borough to preserve the peace. The burgess of New Philadelphia refused to permit General Gobin to enter it. The burgess of Hughestown was at the head of a riotous mob, according to McMillan's testimony. T. G. Brown testifies that William Major, chief of police of Moosic, abused and threatened the coal and iron police, and numerous other instances have occurred where justices of the peace, burgesses, members of council, school boards and all other civil authorities sided with and helped and stimulated the action of the lawless element in the community. Such instances are freely given in the testimony.

Efforts in this direction do not stop with local authorities. We had a very remarkable series of letters and communications in connection with the use of the military arm of the government. I refer to the instance of that convention or town meeting which was held and passed resolutions requesting the Governor of the Commonwealth not to permit the military to be used to escort what were called strike breakers to and from their work, and alleging that it had been represented to them—and it appeared afterward that President Fahy was authority for it—that the governor had promised that the troops should not be used for such purposes. In other words, this was an effort to limit the power of the highest executive of the state to enforce the laws and protect private rights.

The Constitution, Article IV, Section 2, provides: "The supreme executive power shall be vested in the Governor, who shall take care that the laws shall be faithfully executed." Section 7 makes him commander-in-chief of the

army and navy except when in the actual service of the United States.

In the cross-examination of General Gobin by the eminent counsel for the miners he developed a theory in his mind which he strove to have General Gobin confirm, that there was a point where the use of the military for the protection of private rights stopped—stopped before the private rights stopped. We repudiate that construction of the law. We claim that when the sheriff of the county has notified the Governor that he has reached the limit of his power to preserve the peace and the military are sent there, they are there to protect every right of property and every right of person which it is necessary to protect and there are no limitations upon that. To say that they might protect property from dynamiting or from fire or from attacks of mobs, to say that they might protect men who were working in a stockade and see that they are not attacked by rioters, but that they may not see that a man who lives half a mile from the workings is not attacked on his way to and from work; that at that point their functions cease and their powers are limited, is a daring doctrine to announce in any court or before any tribunal, and yet that is the doctrine which seems to have been deliberately set forward here.

MR. DARROW: That is rather an important question, as to the limitations of the military before martial law is declared. I would certainly be glad to have you give your views fully, at least if you care to do so. It seems to me there clearly is a strict legal limit as to what they have the right to do in the absence of martial law.

MR. TORREY: I shall not dwell upon the matter, but my conviction is that the Governor being the supreme executive and being charged to take care that all laws are executed, that when the military arm of the government under his control is preserving the peace and the property of any section there is no right, public or private which they have not the right and which it is not their duty to conserve

and protect; that if the non-union man, call him strike breaker or what you will, has a right to walk from his house to the works and back again, and anybody proposes to interfere with or obstruct that right, that it is not only the right but the duty of the military to see that he is protected.

MR. DARROW: It does not supersede the civil law, does it?

MR. TORREY: It seconds and supplements the civil law. The sheriff having sent for the military arm, when it comes there the military arm has a right to assist him in anything.

THE CHAIRMAN: Becomes a military posse comitatus.

MR. TORREY: Yes, sir; that is my view of the case.

MR. DARROW: What does that mean exactly?

MR. TORREY: You will have an opportunity to elaborate very fully your views upon that, Mr. Darrow. I am glad I have opened the door for it, or made it necessary for you to do so.

MR. DARROW: I wanted to get your point of view, that is all.

MR. TORREY: I wish to say in this connection, out of affection for my own home, the city of Scranton, that it seems to have shown a somewhat exceptional record in connection with the violations of the law. It is the only town in which a mine ran for any length of time and produced coal to its full capacity. Under the evidence I think that is to be attributed to the fact that the sheriff was to the very limit of his ability doing his duty and that he was heartily seconded by the civil authorities of the city itself, the recorder and his police. Notwithstanding General Gobin's opinion that 50,000 men could not have protected the mines so they could be worked, and it may be true in the state of public sentiment, I venture to say that with less than the military force which was there, if every local official of every grade had been earnestly and vigorously attempting to per-

form his duty, there would have been no difficulty in having any man protected in all his rights.

I wish to refer to some other characteristics of this organization which we think make it unworthy to be foisted upon us as a contracting party. One is its use of intimidation. Mr. Mitchell admitted before the industrial commission that intimidation was used to some extent and discriminated between lawful and unlawful intimidation. Just where the difference lies I do not know. This evidence is full of cases of intimidation. The union encourages the use of pickets. This is declared by its highest officers. That is a general invitation to violence. Let me imagine the case of some man from Russian Poland, who has been only a few months in this country and cannot speak the English language, who has become a member of a local union and a strike comes on and he is told that it is the duty of the locals to act as pickets; that the purpose of the pickets is to prevent men from going to work, if possible, by patrolling the highways; that John Mitchell says they must not commit any breach of the law, that is the only limitation, must not commit a breach of the law. Just what is a breach of the law is not defined either for him or for us. What limitations, think you, is such a man placed on picket duty with such instructions likely to place upon the means he will employ to accomplish his purpose? Whether it is a breach of the law to stand around a man in the public highway and chaff him and say he must not go to work and even take his photograph while he is sitting on a stone, which occurred in one case here, I leave the legal member of this commission to determine. It seems to me that that is an interference with his personal liberty of movement. That the threat implied in their numbers and in their surrounding him and in the known fact that they object to his going to work, is coercion and coercion is violence, coercion is a breach of the law.

Mr. Mitchell refuses to qualify the right to boycott, ex-

cept by saying it should be legal. He apologizes for the most outrageous boycotts by saying that it is the fault of the fathers if the wives and the children suffer from the boycott. "It is the fault of the fathers if wives and children are persecuted," I think that is his exact language. He apologizes for the discharge of teachers, whose parents or brothers are working, by the school board, on the ground that they probably would not enjoy their work very well anyway if they did teach, because the children would be opposed to them, and would not be obedient, therefore, it is just as well they should be discharged.

But it is not necessary to cite particular instances. The boycott is accepted and I understand is to be accepted, primary, secondary, tertiary and in all its forms and ramifications as one of the principles of the order and one of the methods by which it shall seek to carry out its purposes. It is justified by Mr. Gompers, who has an article in the American Federationist upon that subject, which I will not take the time to read, but which is in evidence before the commission. The same publication, the American Federationist, contains a long list of boycotted "firms we do not patronize," and the reports of its organizers all over the country wind up almost uniformly by some such statement as this, "all boycotts are published and pushed," "all American Federation labor boycotts are being pushed," "there are no strikes or lockouts to report, all American Federation boycotts are pushed," and so forth and so forth, showing that it is one of the primary methods of carrying on the work of that organization with which this is affiliated, to boycott.

It was very instructive to hear questions asked by the commission and others of one witness after another, and by the counsel as well, upon the line that it was right to boycott, or it was legal and proper to boycott by refusing to patronize a man you did not like, or did not want to patronize, and that we all admit. But that kind of boycott is not

in this case at all. This is altogether and through and through the secondary boycott. It is the persecution of somebody for another's fault, if there be a fault. These notices to the storekeepers are a terrible engine for injury and one which the American people will never permit to be used with their endorsement if they understand it. What protection is there for anyone with reference to these boycotts? How are they declared and their information disseminated? By unsigned papers. Usually they appear in typewriting. By whom are they declared? What opportunity has the boycotted person to appear and defend himself against the boycott? As Mr. Gompers admitted on the witness stand upon cross-examination it is a weapon which is peculiarly open to abuse for purposes of personal malice, or of commercial rivalry. No one can trace back a boycott to its source and find out the reason for which it was declared, or the offense of the person against whom it was declared.

It is attempted sometimes in the testimony here to justify the boycott by the blacklist. It is said that the boycott is no worse than the blacklist. But where is the blacklist? We have not been able to find it yet. We have been hunting for two things during all this investigation which have thus far eluded our search; one is any evidence of the importation of labor on the part of the operators for the purpose of congesting the labor market in the anthracite region, and the other is for the blacklist. The blacklist being, as I understand it, a list of names, or one name, if you please, sent around by one employer to another for the purpose of suggesting that the person named be not employed. Every witness connected with these companies has been perfectly frank about it and said he never heard of a blacklist in the anthracite region. There never was such a thing and the weak attempt to palliate the boycott by the citation of the blacklist is absolutely nugatory.

The union approves of the restriction of individual ef-

fort. It is said by their leader that men have no right to work as much as they can, if by so doing they may be, in the judgment of somebody or other, trespassing upon the work that somebody else might have done if they did not do it.

The evidence is full of regulations by the union of the amount of work that a man shall do. One of the witnesses said that we did not have here any such method as they have in England by which generally there is a definite restriction of the amount of work done. But we have the seeds of it. We have the beginnings of it. This movement is only in its infancy here, but the principle underlying that absolute limitation of the number of bricks a man shall lay, or the number of hours he shall work, or the amount of work he shall do, is right here in this very declaration, that no man has a right to work as much as he can if by so doing he shall, perhaps, perform work that somebody else might have done if he had not. It saps individual enterprise and ambition and as long as this union, or any other union, adheres to that principle, it is unworthy of the support of the American people and will not receive it.

I have here one of the notices under the seal of the union to some of the heading men in Jermyn. Two of them were offered in evidence. It says "if you mine more than your share of cars you will be expelled from the union." The evidence is full of those things and it is not necessary for me to cite them. Pat Mitchell testifies to having been fined five dollars for working over hours. Rules had been adopted prohibiting miners and laborers working more than eight hours.

Again, the union seeks to intimidate and drive out all non-union men and force everybody into this organization. I drew a comparison on the cross-examination of Mr. Gompers between the principles of the Brotherhood of Locomotive Engineers and the miners' union, and there are two things which I think, while they are adopting my

suggestions, it might be well to adopt; one is to get rid of this boy membership and this foreign membership. Adopt the principle that no man shall be elected unless he is 21 years of age and can read and write the English language and is of good moral character. The other is to have such organizations of the employes of particular companies or particular collieries as shall have the power to contract with their employers absolutely independently of the United Mine Workers of America.

MR. DARROW: Mr. Torrey, if he had a good enough moral character to work for you, don't you think we might presume he had good enough moral character to join the union?

MR. TORREY: Well, I do not think that that question arises here at all, Mr. Darrow, but I want to read a couple of resolutions of your union adopted at the Hazleton convention, to show how much confidence the organization has in the character and behavior of its own men.

"Resolved, That this convention does not approve or will not stand by any member who loses his work through those everyday sprees of two, three or four days." I suppose every pay day it means. "By discountenancing this custom we gain the respect of the family, of the brother and the public at large; for when he knows that any trouble that he may get in with his employer by violating the above that he will not receive the support of his local, just so soon will he realize that for his family's sake he will have to discontinue the habit."

That is, the union will not stand by a man if he is discharged, although it will not punish him in the union itself apparently. One of the rules of order is somewhat significant:

"Three—Any member of the convention appearing on the floor in such a manner as to annoy the proceedings of the convention, shall be reprimanded by the chair for the first offense, and for the second, shall be expelled from the

convention and his conduct reported to the local by the secretary of the convention."

We do not claim that the miners of our region, as a class, are less moral than other men of the same position in life, of the same quality in similar occupations. On the contrary, the evidence is full of the testimony of bosses to the effect that they are in the main good respectable citizens and of fair average moral character. But the fact is, that a large number of these men, as in other similar industries, ought not to be vested with the powers which go with membership in a controlling organization, but ought to be stimulated to a better life by being kept out until they are more worthy, or put out when they prove themselves unworthy. We say the interior discipline of the union as it is here revealed is not such as it ought to be to commend it to the commission, or to us. The union does not discipline its members. That was alluded to by Mr. Lenahan and I will not go into it further.

Mr. Chairman, I have occupied more time than I intended to in this discussion.

THE CHAIRMAN: We are very glad to hear you, Mr. Torrey.

MR. TORREY: I will draw to a close.

In an article in McClure's Magazine for December, 1902, written by Mr. Mitchell immediately after the conclusion of the strike and entitled "The Coal Strike," he says:

"If labor makes unreasonable demands, if it attempts to dominate through violence and intimidation, if it seeks to maintain monopoly through suppression of the right of others to work when they are willing to work, labor loses its case."

So far as relates to the clients whom I represent, I should be willing to lay aside all other issues in this case and have it determined upon those specified there. The statement practically recognizes that all temporary questions of rates of wages and conditions of employment are sub-

sidary to the great question of the conduct of the labor unions and the corporations toward each other. It recognizes that even though it might be found that in some places wages were not as high as they ought to be, yet at the end of a long struggle inaugurated by the mine workers to the great injury of their employers and of the public, as well as of themselves, and those dependent upon them, if the purposes of the organization were wrong and pernicious, if their conduct was lawless and revolutionary, it would be unwise to do the public a great injury of lasting consequences in order to right a local and temporary wrong. The encouragement which would result to unions of the character of the United Mine Workers, and the stimulus which would be given to the tyrannical lawlessness and defiant methods which they have pursued, by any substantial award in their favor, would be so disastrous to the future commercial well being of the country as to be very dearly bought by the opinion that the award was giving some help where help was needed.

To take up in more detail the heads of the issue presented as above by Mr. Mitchell. Let us inquire if labor has in this instance made unreasonable demands. There is hardly any basis upon which the subject can be considered which would not lead to that conclusion. The demands began, as I stated this morning, with the Hazleton convention in 1900, where advances were demanded amounting to seventy per cent. increase upon the cost of producing coal. Those demands have been cumulatively following each other ever since. These demands here are, we think, unreasonable just as they are formulated; but Mr. Mitchell says they have not demanded enough, and it is the evident purpose to continue the demands until the very limit is reached.

"If labor attempts to dominate through violence and intimidation." Certainly no person of ordinary intelligence or capacity to understand evidence could question, after

reading the testimony with reference to intimidation before, during and after the strike, of violence systematic, universal and continuous, that not only was there violence and intimidation, but they were agencies deliberately selected for the promotion of the purposes of the mine workers, and that it was practically upon them that they depended, and by them alone their success was secured.

“If labor seeks to maintain monopoly through suppression of the rights of others to work when they are willing to work.” By the statement of the policy of the union that every man must be gotten into it, by the declaration that a man has not the right to work as much as he can work, by the determination to expel from the coal region every non-union man, and to prevent non-union men from working; throughout the whole record the evidence is clear that this purpose is deliberately in the minds of the United Mine Workers, and that it is for that that they are principally struggling.

Above and beyond and more important than all the issues of wages or conditions of employment are these great principles of justice and of American liberty; the personal rights of the individual; the rights of those owning property to its fair control so long as they do not infringe upon the rights of others; the right of every man in this land, in any work that he undertakes to perform, to do as he will so long as he infringes upon the rights of no other man; those rights are deliberately denied by the principles which are enunciated by this organization; and we impose it upon this commission as a duty, a high and important and sacred duty which they must perform to their country, to establish upon an irrefragable basis these sacred rights.