less than their normal income but are expected to maintain normal rates of output. Reaction in the form of quits, reductions in work effort and even in collective slowdowns appears likely and, in many cases, difficult for the employer to counteract. Furthermore, in many conflicts workers in particular rely on external costs to indirectly place pressure on the opponent (the employer) to settle on their terms. In these, a procedure which seeks to eliminate external costs would be most unattractive to workers.

Problems such as the above account for the limited use that has been made of the non-stoppage strike. Its only recorded application was in 1960 by Miami bus drivers and the Miami Transit Company and that was abortive.[54]

CONCLUSION

There is no one best way to resolve impasses. Some procedures are more suited to particular impasses than are others, suggesting that a range is desirable. The breadth of this range, as indicated by the procedures examined here, attests to considerable experimentation, especially in recent years, by policy makers and the parties themselves. But, however innovative and ingenious they may be, impasse procedures will not eliminate strikes. Acceptance of this is explicit in some public sector legislation which provides for limited access to the strike.[55]

THE COAL MINES COUNCIL

* RALPH RINTOUL

FOREWORD

This paper is intended as an introduction to a disputes resolving procedure peculiar to the New Zealand mining industry. To the best of the writer's knowledge no previous attempt has been made to describe this industrial tribunal (Coal Mines Council). I could find no trace of any in-depth study on the value of this and other industrial decision-making bodies in New Zealand. It has not been possible therefore to draw comparisons. The opinions expressed are those of the writer, and not necessarily those of the Mines Department, Coal Mine Owners or Miners' Unions.

INTRODUCTION

Underground Coal Mining is an uncomfortable and often dangerous occupation demanding special skills. It is a job few people want to do, and even fewer can do. Those that actually work at it have for generations been an independent, hard working group of men who think they are special, and in fact, they are.

Ever since Unions were formed Miners have been in the forefront in progressive rule making procedures, for better working standards and conditions. The Coal Mines Council came into being as an indirect result of representations made to the Minister of Mines by the Miners National Council in a letter dated 13 November 1939 which read as follows:

> "The Miners National Council ask the Government to set up a Commission to inquire into all aspects of the coal mining industry.
>
> The intention of the resolution is that the trading and social sides of the industry should be investigated as well as the mining side."

The Government decided to appoint a Royal Commission to inquire into all aspects of the Coal Mining Industry. This

54—See McCalmont, **op. cit.**, pp. 191-192.

55—The Canadian Public Service Staff Relations Act, 1967 gives bargaining units the option of either the arbitration or the conciliation-board and strike route for settling strikes. (See Anderson and Kochan, **op. cit.**). By late 1976 seven states (Alaska, Hawaii, Minnesota, Montana, Oregon, Pennsylvania and Vermont) had granted a limited right to strike in the public sector. (See **FMCS Report No. 29**, p. 18).

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was changed to a Coal Mine Commission following representations made on behalf of the New Zealand Coal Mine Owners' Association.

The Coal Mine Commission was given the task of visiting coal mines throughout New Zealand, with the object of securing, as far as possible, the maximum output of coal, and to inquire into:

(1) The plant machinery and equipment of collieries visited.
(2) The methods of working and lay out of workings underground.
(3) The methods of transportation of coal from the working face to the mine mouth.
(4) The housing of workers and means of transport to and from work.
(5) Facilities for employment and accommodation of additional workers if required.
(6) The maintaining of adequate supply of mining equipment.
(7) **Machinery for settlement of industrial disputes — the Commission to be given complete authority to settle all disputes in which the local machinery has failed.**
(8) Causes of accidents and methods of accident prevention.
(9) All such other matters as the Commission may consider relevant to its main purpose, the stimulation of output . . .

and to report to the Minister of Mines with all such recommendations as may seem to the Commission to be necessary **in order to prevent industrial disputes arising,** and to ensure the steady and uninterrupted output of coal in quantities sufficient for the needs of the Dominion.

The Commission comprised Mr T. O. Bishop (Chairman), Mr C. J. Strongman (representing the Coal Mine Owners) and Mr A. McLagan (representing the N.Z. Mine Workers Union).

It was later decided, that rather than constitute a temporary commission of inquiry, the proposed body be made a standing tribunal with executive powers. The outcome of this decision was the enacting of the Coal Mines Council Emergency Regulations (1940/135) and the appointment of the Commission as members of the Coal Mines Council. The objects of the Coal Mining Commission were retained in Regulation 3 — Function and Powers of the Council — thus giving the Coal Mines Council the power, should the need arise, to investigate the matters mentioned, as a Coal Mines Commission, together with an executive function in the settlement of disputes.

LEGISLATION: The Structure, Powers and Procedures of the Coal Mines Council

The Coal Mines Council Emergency Regulations (1940/135) were gazetted on 26 June 1940. These regulations were subsequently amended by Coal Mines Emergency Regulations 1940, Amendment No. 1 (1944/96), and later included in Part II of the Coal Mines Amendment Act 1959 as Section 166B. The purpose of the legislation was to provide a specialist tribunal to adjudicate industrial disputes, and to provide an appropriate framework for the maintenance of industrial harmony within the Mining Industry.

The Coal Mines Council consists of three members appointed from time to time by the Minister of Mines. One of the members is appointed Chairman by the Minister. Each member holds office during the pleasure of the Minister and the powers of the Council are unaffected by any vacancy in the membership. Claims before Council are decided by majority vote.

The technical nature of the majority of the disputes, makes it imperative in the interests of all parties, that members of the Council be reasonably familiar with the jargon and realities of the Industry. Thus appointments to the Council by the Minister "shall have regard to the desirability of having a member especially conversant with matters affecting owners of coal mines, and a member specially conversant with matters affecting the workers in the coal mines." Appointment to the Council of persons aligned by training and experience with one or other of the two broadly opposed viewpoints tends to instil confidence in the Council.

The risk of bias must inevitably arise and is noted in Section 166B (7) which reads "No member of the Council shall be deemed to be interested in any matter before the Council solely on the grounds that he is a coal miner or an owner of a coal mine, or a manager or other employee of any such owner, or a member or officer of any union or organisation of owners of coal mines, or of employers of coal miners."

The result of appointing partisan viewpoints in the fabric of the Council, does tend to cast a burden on the Chairman to maintain a balance. An experienced neutral chairman is an essential ingredient to ensure success of the proceedings, and thus maintain confidence in the Council. The need for decisions to be an impartial consensus, taking into account the realities of the situation, thus ensuring justice is seen to be done, would be the object of any successful Coal Mines Council.

The principal powers of the Coal Mines Council are to settle industrial disputes. The term 'industrial dispute' is defined in Section 166A as being disputes on matters affecting, or relating to work in a coal mine, or the privileges, rights and duties of owners, or workers in a coal mine. Disputes may be referred to Council by either of the parties to the disputes or by the Minister of Mines. Council may on its own initiative exercise its powers in relation to any industrial matter relating to coal mines, whether or not an industrial dispute has arisen. Decisions of the Council are implemented by directions to the parties and failure to comply constitutes an offence against the Coal Mines Act 1925 (Section 166H (6)).

The bulk of Coal Council decisions involve local disputes, the interpretation of existing contracts and agreements, and rulings on matters not covered by the agreement. Council may adjudicate on anything amounting to an industrial dispute or industrial matter. In practice Council does place some limitations to its powers, i.e. it takes into account current monetary and incomes policy of Government. It often directs the fundamental cause of the dispute be placed on the agenda at the Annual Agreement Conferences held between employers and the employees in the mining industry.

Meetings of the Council are held "at such times and places as the Council from time to time appoints" and the Council may "regulate its procedures in such manner as it thinks fit." The Council is required to "take such steps as it considers necessary to ascertain all matters relating to any industrial dispute referred to it, and the merits of the dispute, and for those purposes shall permit all the parties to the dispute and their representatives to appear and be heard before the Council" (Section 166H (1)).

The Coal Mines Council thus has the ability to move in on disputes rapidly and give decisions at short notice. By their very nature, industrial relations problems may arise suddenly, having serious repercussions throughout the industry and the economy, and may require quick solution. Procedural formalities could hinder both the effective settlement of disputes, and the quick resumption of normal industrial relations, essential to the minimization of stoppages in the industry.

Under normal circumstances however disputes are accumulated, and dealt with by Council on their periodic visits to the coal mining districts. These disputes would only be referred to the Coal Mines Council after the failure of the union and local management to reach agreement.

It is required practice for both parties to advise the Chairman of the Council that a dispute exists, giving brief details of its nature. The Secretary of the Coal Mines Council, on the Chairman's instruction contacts all parties, and arranges a mutually acceptable date for a hearing.

At the hearing both parties make written and oral submissions. They are then questioned by Council on any points they require further clarification on. The parties main advocates are usually the District Manager and local Union President. They in turn are assisted by nine management and union officials respectively.

All discussion takes place in an informal atmosphere, without legal representation on either side. Matters are discussed openly and frankly, with both sides having the right to cross-examine, and reply to allegations made by the other party.

The Council then adjourns and sits in Wellington, usually within 14 days of the hearing, to make their decisions. Decisions of Council are by majority vote, although rarely a dissenting opinion is expressed — there were none in this category during the period 1960-1976.

The legislation lays down that every decision of the Council in respect of an industrial dispute shall be final and binding on all persons directly affected by the decision, but any such decision may be varied or revoked by a subsequent decision of the Council, or may be varied, replaced, or revoked by agreement between the parties (Section 166H (4)) and that, except on the grounds of lack of jurisdiction, no proceedings, or decision of the Council shall be liable to be challenged, reviewed, quashed, or called in question in any Court (Section 166H (7)).

The goal of good industrial relations lies behind this express recognition of the right of the parties to arrive at a settlement of their own making. Appeals to the Council itself will only be entertained where fresh evidence is produced.

ANALYSIS OF COAL COUNCIL DECISIONS 1960-76

During this period a total of 1247 cases were heard by Council, of which 276 (or 22% of all cases) were matters requiring interpretation, definition, and opinion, on existing instruments, relative to the work place.

On the remaining 971 cases the Council ruled as follows:

Granted in full	314 or 32%
Granted partially	244 or 25%
Declined	349 or 36%
Referred to Agreement Conference	64 or 7%

For a decision making body, particularly in this field, to operate for nearly 40 years without one or other of the parties becoming totally disenchanted, is a remarkable achievement.

Based on the decisions analysed, this perhaps results from the somewhat "Solomon" like decisions given, i.e. approximately 1/3rd granted, 1/3rd declined, and 1/3rd expressing the Council's opinion and/or interpretation on existing agreements, contracts, bonus schemes and legislation. The overall effect has been to make no party completely happy, and contrariwise no party completely unhappy.

Of the 57 types of dispute categorised, 8 provided the bulk of claims encountered as shown below:

1. 'Average' earnings — Miners removed from cavilled places	141
2. Cold time and wet time	136
3. Waiting time — power failure breakdown, etc.	105
4. Wage rates, i.e. rate for job	86
5. Dust time and stink time	53
6. Trucking by miners	52
7. Holiday payments	43
8. Tonnage rates	39
	655

This total (655) represents 52.5% of all claims during the period.

Set out in Table 1 below is a schedule indicating the number of disputes, based on the numbers of claims per 100 employees per annum, and, in Table 2, a schedule of all claims, categorised and analysed in respect to decisions given.

TABLE 1

CLAIMS PER 100 EMPLOYEES PER ANNUM

	Northern	West Coast	Southern	Overall
1960	3.7	4.4	1.8	3.7
1961	1.1	2.2	2.8	1.9
1962	2.6	3.3	1.2	2.6
1963	1.7	2.0	3.0	2.1
1964	2.2	2.3	2.2	2.2
1965	3.5	3.6	1.7	3.2
1966	2.8	1.9	2.4	2.3
1967	2.7	1.9	1.8	2.1
1968	2.0	3.3	2.8	2.8
1969	3.3	1.9	3.1	2.7
1970	3.7	2.5	5.5	3.6
1971	2.9	2.2	4.1	2.8
1972	2.1	1.7	4.8	2.5
1973	1.5	2.9	1.0	2.0
1974	4.4	3.9	4.4	4.2
1975	1.7	1.5	3.4	1.9
1976	2.7	1.2	1.8	2.0

i.e. for every 100 persons employed in coal mines during 1976 the Coal Mines Council received 2 claims.

TABLE 2: SCHEDULE OF CLAIMS, 1960-1976, AND DECISIONS GIVEN

Category	Number of Claims	Granted in Full	Granted Partially	Declined	Referred to Agree. Conf.	Ruling Given
Absence from Work	30	8	12	5	—	5
Apprentices	5	—	—	—	3	2
Attendance Bonus	15	10	—	4	—	1
Average Earnings	141	35	30	54	—	22
Back Shift	10	2	2	4	—	2
Boring	5	1	1	1	1	1
Bottom Coal	1	—	1	—	—	—
Breaking away places	10	2	1	5	—	2
Cavilling	11	1	2	1	2	5
Clothing	15	7	2	—	2	4
* **Cold and Wet Time**	136	42	24	42	3	25
Day Wage Rates	86	19	10	30	9	18
** **Dust Time and Stink Time**	53	7	6	18	3	19
Dirt Scale	21	5	6	3	1	6
Dismissal Notices	5	—	1	—	—	4
Engine Drivers Agreement	12	1	5	2	—	4
Explosives and Tools	14	4	3	2	1	4
Holidays	43	18	3	14	1	7
Hot Places	2	1	—	1	—	—
Hours of Work	30	3	6	9	2	10
House Coal	3	2	—	1	—	—
Hydro Mining	9	1	—	5	1	2
Injured Workers	15	5	2	—	—	8
Laying Rails	1	—	—	—	—	1
Long Service Leave	1	—	—	1	—	—
Machine Mining	5	1	1	1	1	1
Mechanised Mining	5	1	4	—	—	—
Minimum Wage	9	1	3	5	—	—
Minimum Weekly Wage	7	4	—	2	—	1
Miscellaneous	41	10	9	8	5	9
Miss-Shots	4	1	—	—	—	3
Night Shift (Dogwatch)	8	—	—	6	1	1
Opencast Agreements	20	5	1	2	2	10
Overtime and Mine Allowance	34	5	3	10	2	14
Payment of Wages	6	1	—	1	—	4
Production Bonus	15	3	—	7	1	4
Rope Road Contracts	5	—	—	1	1	3
Side Coal	1	—	—	1	—	—
Stone Dust Handling	4	—	—	—	—	4
Stone Dusting	1	1	—	—	—	—
Stop-Work Meetings	22	8	2	5	1	6
Temporary Work	22	7	5	5	—	5
Timbering	15	5	5	2	1	2
Tonnage Rates	39	9	10	15	3	2
Transport of Workmen	35	7	11	8	3	6
Travelling Time	4	—	2	—	—	2
Trucking Contracts Misc.	11	5	2	1	—	3
Trucking Contracts Huntly (Pve)	5	—	1	3	—	1
Trucking Contracts Huntly (State)	6	1	—	2	—	3
Trucking Contracts (Buller)	9	2	—	4	—	3
Trucking Contracts (Grey)	7	—	2	1	1	3
Trucking Contracts (Southland)	13	5	1	2	1	4
Truckers going on Coal	2	1	—	1	—	—
Trucking by Miners	52	15	8	16	3	10
Underground Officials	37	10	4	8	6	9
Waiting Time	105	26	47	23	1	8
Yardage	24	6	6	7	2	3
	1247	314	244	349	64	276

* Among the more prolific causes for dispute in coal mining are those involving 'wet' and 'dust' time. Both, although health related problems, confer on the receiver substantial penalty payments and/or shorter working shifts. 'Wet' time is more easily defined, and the circumstances that are necessary to qualify, are spelt out clearly in the Industrial Agreements. There are however, still marginal cases, that have some unusual feature requiring determination.

** 'Dust' time presents a more difficult problem. There are no set standards stipulated in agreements. No instrument is available to make rapid measurements of dust in suspension, so that any decision is one of 'opinion' rather than scientific fact. This problem is under study at present by a specialised 'Dust Committee.' It is hoped some acceptable standards will be set that can be easily measured and determined. The present rule is to stop work in the place until the dust nuisance is alleviated, by any of the known methods i.e. water sprays and better ventilation.

IMPORTANT DECISIONS

Decisions by the Coal Council that have had considerable impact within the Coal Mining Industry include:

1. Decisions 1944/3 and 1945/46 — Agreements Underground Mines

Both decisions followed a breakdown between the United Mine Workers Union and the Coal Owners Association. Agreement had been reached in earlier negotiations between the Union and the Minister of Mines and the Union wanted the rates and conditions to apply in the private sector. Decision 1945/6 required the Council to rule on 3 matters raised by the Coal Mine Owners who submitted the Council had no jurisdiction, or authority to deal with the application made by the United Mine Workers Union because:

(a) One of its members, Mr Prendiville, had previously expressed his personal opinions in connection with the application and was therefore not unbiased in regard to the application.

(b) That the Council's decision of 1944/3 was binding for a period of 2 years from 1 May 1944, and that the Council had no authority to amend the decision.

(c) That the Arbitration Court was the proper authority to determine the application made by the United Mine Workers.

The Council considered the submission and ruled:

(a) That in the conference between the mine owners and mine workers referred to, Mr Prendiville was acting as advocate for, and expressing the views of, the United Mine Workers and not his personal views, and consequently the Council was satisfied Mr Prendiville could not be regarded as being biased.

(b) When deciding the term of the new agreement should be for 2 years from 1 May 1944, the Council did not intend to, and could not, bind itself not to deal with any industrial dispute that might arise during that time, when matters it had decided should be included in such new agreements; and in any event there was a tacit understanding between the parties, that agreements made in respect of rates of wages for the mine workers, would be subject to review in the event of any provision of a general character made by the Court of Arbitration with a view to increase of wages.

(c) The Council was satisfied it had the Authority to deal with the matter, and that it was not one for determination by the Arbitration Court.

In both instances the Council granted the application. The effect of these decisions was for future agreements with the United Mine Workers Union to be held jointly with private coal owners and State Coal Mines. It also showed that where the parties failed to agree the Coal Mines Council would hear the application and rule on the matters raised.

2. Decisions 1945/7 and 1945/41 — Opencast Mine Agreements

Both these decisions relate to the making of the first agreement for Opencast Workers (other than Stockton).

The Council viewed most of the Opencasts where working conditions were similar and drew up an agreement setting out wage rates and conditions that would apply to all opencast coal mines. This is an instance where the Council took the initiative and created an agreement without either party effected taking part.

3. Decision 1948/302 Seven Hour Day

The case concerned a claim by the Union for a seven hour day for underground workmen in privately owned coal mines. The Government had already given an undertaking to introduce a seven hour day in State collieries.

The Council after carefully reviewing the evidence put before it considered it would not be practicable for the privately owned mines to work on a different basis to State owned mines. The Council was satisfied there was nothing in the seven hour day agreement which conflicts with the law; as provided for in respect to hours of employment, under the Coal Mines Act 1925.

The claim was granted with conditions in respect thereto to take effect from 5 April 1948.

4. Definition of Hot Places 1941/7 Definition of Dip 1945/43

Both the above decisions on the conditions mentioned have stood the test of time, i.e.

(a) **Hot Places**

"A 7 hour shift shall be worked in any place in which the wet bulb reading is 23°C, but not higher than 24°C.

A 6 hour shift shall be worked in any place in which the wet bulb reading exceeds 24°C, but is not higher than 25°C. In any place in which the wet bulb reading exceeds 25°C work shall be continued only under special arrangement which may be entered into between the management and the union." (Clause 21 Coal Mines National Agreement).

(b) **Dip**

"A grade which requires power other than manpower to haul the coal should be termed a dip." (Clause 1 and 2 Coal Mines National Agreement).

In all industrial agreements where these conditions are likely to arise within the coal mining industry, the Council's rulings are followed.

5. Strikes — Waikato Engine Drivers — Decision 1973/4
Ohai District Mines — Decision 1976/12

The general policy of the Coal Mines Council is that work must resume, or suitable assurances given that work will resume, before hearing claims. In the cases referred to above, the mines were idle, and neither party had made any approach to the Coal Mines Council to adjudicate. The Council could have intervened on its own initiative, but did not, so the Minister of Mines then directed the Council to act.

In the case involving the Waikato Engine Drivers' (Coal Mines) the hearing took place without the Union's participation. The dispute concerned wages paid to fitters in the Waikato Engine Drivers' (Coal Mines) Union and those paid to mine workers underground in a mechanised mine. The United Mineworkers' Union members were paid under a different industrial agreement, and also participated in a Productivity Bonus scheme negotiated by their Union.

The Ohai dispute related to hewers objecting to the manning of a road-header machine by shiftmen, i.e. a demarcation dispute within the same union.

In both cases normal work resumed after the Council determined the issues and gave its decision.

6. Working in Dusty Conditions 1975/33

The Council ruled that it was not its job to prognosticate on methods of controlling or eliminating dust or to determine a policy on dust time. The Council considered this was a matter for discussion between the parties concerned in association with experts. The Council therefore recommended such discussions be held as soon as possible. This advice was accepted and resulted in a "Dust Committee" being set up comprising members of the union, management and specialists, with the Chief Inspector of Coal Mines as Chairman.

7. Mine Safety — General

During the hearing of evidence on various claims, matters relating to safety are occasionally commented on. If the Council considers some act, or omission to act, to be an unsafe practice mention is made of the same in the decision. The Council will either direct such action cease forthwith, or suggest remedial action be taken to overcome the problem.

INDUSTRIAL RELATIONS OTHER THAN DISPUTES OF RIGHT AND/OR INTEREST

1. Mine Closures — Redundancy

The Council has not been directly involved, but by the nature of its formation has been in close contact with decision makers on both sides. Members by the very nature of their normal duties, have been in the van in drawing up proposals to ensure a smooth transition of the workforce. Monetary compensation and assistance procedures are discussed and agreed upon by the parties well in advance of the actual shutdown.

2. Pay Rates

The Council in recent years has not been required to adjudicate on Wage Rates. Annual Agreement Conferences establish wage rates that have had to conform to the various wage restraints under the Economic Stabilisation Regulations.

3. Coal Production

The Council's function in this field has largely been overtaken by events. Decisions taken by Government and consumer demands resulted in a general downturn in the mining industry, necessitating mine closures. This trend has now reversed, and difficulty is being experienced in trying to meet demand. The Council's activities in this field are limited, other than as a means of maintaining industrial harmony despite the vicissitudes that have beset the industry. The powers invested in the original Emergency Regulations were with-

drawn in the 1959 Amendment Act and consequently the Council does not have any jurisdiction in this field.

4. Changes in Machinery and Work Methods —

Mechanised Mining and Hydro Mining

Considerable advances have been made and are continuing to be made in the modernisation of mines with the introduction of more sophisticated machinery and methods. Members of the Coal Mines Council are briefed by the Secretary of Mines where it is intended to install modern machinery and work methods in either (a) an existing mine, or (b) in a new mine. The Council is given ready access to all material and data relative to the proposal. Members would also at the earliest opportunity view at first hand the installation and working procedures.

At this stage the Council has assumed more of a watching brief than having any direct influence on progress being made. Council has kept abreast of developments, and has been asked to resolve minor disputes that have arisen. The same comment made in relation to redundancy applies equally in matters under this heading, i.e. members of Council are often directly involved in the day to day planning, consultation and decision making.

5. Working Conditions

The Council's concern has been to ensure the working environment is maintained at a level consistent with safety and modern standards.

6. Work Stoppages

The Mining Industry were once regarded as one of the most strike prone in the nation. Recent statistics now point to the considerable reduction in the incidence of strikes in coal mines. Various factors may be responsible for this decline, but it could be argued the Coal Mines Council has been the 'release valve' the industry needed to resolve conflict, and thus has been a substantial contributing factor in this regard.

7. Magistrates Court Decision

W. H. Luke, K. Hume and B. Creagh v. Attorney General (State Coal Mines)

Unreported. Hearing Greymouth 1956

A case that was to have considerable bearing on the continued use by both parties of the Coal Mines Council rather than recourse to the Court resulted from a judgment handed down by Leslie N. Ritchie Esq., S.M., in the Magistrates Court, Greymouth, dated 6 February 1957.

The plaintiffs, three truckers, members of the United Mine Workers Union, employed at Dobson Colliery, claimed 3 hours wages at 9/3d per hour, 3 hours wages at 9/7d per hour, and 4 hours wages at 9/3d per hour for allegedly working in dusty and hot conditions. These claims had never been submitted by the Union to the Coal Mines Council for determination.

I quote extracts from the judgment referring to the Coal Mines Council:

Page 2 "This Council is authorised to settle industrial disputes and this body has absolute authority and can override any agreements or awards which may be applicable."

Page 3 "I consider the claims in these cases were never submitted to the Coal Mines Council for a decision. The Miners Union did submit general issues to the Coal Mines Council, and had such a body seen fit promptly to rule on same, no doubt this Court may have been bound by such decision."

Page 8. "Only the Coal Mines Council or a new or amending agreement between the parties could affect the existing agreements that the claim re hot time, if disputed, should be referred to the Disputes Committee, and that the claims re wet and dust time, if disputed, be referred to an independent umpire."

The Magistrate gave judgment for the defendant (State Coal Mines) in two cases and found for the plaintiff (Hume) in the remaining case. Costs of $42.00 allowed to the Crown (State Coal Mines) and allowed Hume (United Mine Workers Union) $22.00. The disputes arose during March, April, and May of 1955. The Court hearings took place on 12 October 1956 and 28 November 1956, and the Decision was given on 6 February 1957. The costs of the action in time and money resulted in a pyrrhic victory for both parties. By tacit agreement both State Coal Mines and the United Mine Workers Union resolved that for the future the Coal Mines Council was the appropriate forum for the resolution of industrial disputes.

CONCLUSIONS

It is of interest that both Australia and England have 'specialist tribunals' for

handling disputes in the Coal Industry. Australia has a Local Coal Authority and Coal Industry Tribunal under the auspices of the Joint Coal Board. England has the Labour Relations Departments in Area, Divisional and National level, operating within the framework of the National Coal Board.

In both cases, although their aims and objects are similar to those in New Zealand, procedures differ greatly, not only because of the larger numbers employed, but also due to the different arbitration and conciliation procedures prevailing in the respective countries.

Although not all would agree with the decisions of the Coal Mines Council, there is generally a recognition that much of the credit for the continuity of work and production can be traced directly, or indirectly to the existence of the Coal Mines Council. In resolving conflict many different methods have been tried, and some found wanting. In the case of the Coal Mines Council no acceptable alternative that could perform the functions more efficiently, has yet been devised. The Council has stood the test of time justifying its existence and the foresight of its originators.

Various individuals and associations have from time to time sought to have the powers of the Council curbed, or provision of some basis for appeal other than on "jurisdictional" grounds. In the main the objectors have been outside the industry (e.g. Public and Administrative Law Reform Committee) although coal owners and union secretaries have also commented on this question. In 1959 when the Coal Mines Amendment Bill was being drafted a clause was included that specifically barred the Council from having the power to alter any award of the Court of Arbitration, or any agreement under Section 189 of the Coal Mines Act 1925 or any voluntary agreement. The then Chairman of the Coal Mines Council in a letter to the Minister of Mines, stated "if the proposed Council is to be prevented by law from altering an agreement, then their scope of jurisdiction is very limited indeed. I feel sure that a big proportion of their decisions (not less than 60%) would be challenged on the grounds of "lack of jurisdiction." I am absolutely convinced that the proposed proviso means nothing in actual practice as the number of times that it would be agreed to alter an agreement would be negligible. A very considerable percentage of the disputes placed before Council are questions which are in effect interpretations of the agreement regarding the application of some particular payment for particular work performed; it therefore follows that in all these cases the decision of the Council would be challenged under "lack of jurisdiction" . . . All agreements contain matter which create anomalies and it is almost impossible to adjust these matters in a just manner, and in a manner consistent with the spirit of the agreement without making some minor alteration."

The clause was dropped from the Bill so by implication the Council has the authority, as it was not specifically debarred from issuing decisions on agreement matters. In respect to Court Awards, Orders, Stabilisation, and Wages and Incomes Policy, the Council always works within the framework of current legislation.

One of the most characteristic features of the Coal Mines Council is its avoidance of legalism, a proposition its detractors have striven to change. The informality of proceedings provides useful flexibility in dealing with quite complex situations. The power to make decisions which are final and binding, apart from decisions outside its jurisdiction, avoids the inevitable problems that arise where, when a party is dissatisfied with the decision of one authority, it can then turn to another. Quite apart from the inevitable delays, the costly legal wrangles that ensue do nothing to foster better industrial harmony. The Coal Mining Industry prefers to settle its own differences in its own somewhat unorthodox way, rather than get someone else to solve them for them. This further epitomizes the type of men the industry employs, and their generally independent attitude in the industrial field.

Under existing legislation, with all its machinery for resolving disputes, the number of times the Minister of Labour has been called on to resolve other industries problems is legend. During the past 25 years he has never been drawn into any industrial dispute in the Coal Mines. I think this speaks for itself, and justifies the existence of the Coal Mines Council.

Since the inception of the Coal Mines Council there has never been a national strike called by the United Mine Workers

Union — even during 1951 the southern area mines, and opencast mines continued to operate. Strikes that have occurred have generally been confined to one mine and at most the mines within a particular area.

During the course of my research I have become even more convinced that the system for the resolution of conflict evolved in the mining industry could usefully be extended, particularly to industries where present industrial relations are not what they should be. If my hypothesis is correct the Government, Employers Federation, Federation of Labour and the Labour Department could usefully explore the possibilities of implementing like procedures.

NEGOTIATING WITH THE JAPANESE

* ALAN GLOGOSKI

INTRODUCTION

Many characteristics of Japanese society and institutions are absolutely unique. These must be recognized and understood if an effective dialogue with the Japanese is to be achieved.

Traditional Japanese values are not derived from or even influenced to any significant degree by Judeo-Christian traditions or beliefs. Many things that are taken for granted in the West are therefore completely alien to their culture and are outside their traditional system.

I would like to touch on some important aspects of the traditional Japanese culture, society, national character and political system, and how these influence their negotiating habits.

COMMUNAL

In nearly all activities and issues the Japanese traditionally think of themselves as members of a group, and their satisfactions are largely expected to come through group fulfillment of group objectives. In traditional Japanese culture and to an amazing degree today one of the worst sins is to display an egoistic disregard of, disinterest in, or resistance to group mores, attitudes, taboos, traditions or objectives— or often just to display any individualism at all.

Japan is probably the only large country in the world in which everybody concerned — management, labour, consumers, family, the general public — tends to identify the success of a business firm with the success of the nation and with his own individual success. The firm's triumph is the nation's triumph and also his own triumph. This shows up in foreign trade where the Japanese co-operate to a remarkable degree even while competing. Whilst the Japanese exporter tries best for his own firm he takes almost as much pleasure in any Japanese export success.

Robert Huntingdon[1] comments "that the Japanese personality has weak, indistinct, permeable boundaries between the self and other, is dependent rather than independent, group co-operative rather than self reliant, conforming rather than innovative and accepting of personal rather than rational legal authority."

Ideal types of character are an important indication of a nation's culture. Probably to a degree unmatched in any other culture the Japanese have exalted such qualities as loyalty, faithfulness, devotion, dedication etc, as associated with the faithful servitor on the one hand — and the corresponding qualities of loyalty, protection, meticulous regard for ritual, codes, obligations etc. appropriate to the responsible, paternalistic Confucian master on the

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1—Huntingdon, Robert, 'Comparison of Western and Japanese Cultures,' **Monumenta Nipponica,** Tokyo, Vol. XXIII, No. 3-4 p. 477.