

The Rise and Fall of Unions in the Coal Industry: How the new era of labor union resurgence can protect the miners that remain

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INTRODUCTION

As the world progresses deeper into an era of great technological advancement in every aspect of human life, one industry is still struggling to grow and survive. The coal mining industry has seen rapid and profound decline across the nation, but particularly in the Appalachian region.¹ Those that are still a part of the coal industry are met with increasing challenges to their pensions and healthcare benefits promised by employers and legislators alike.²

The current pension plan for miners relies on a fund agreement negotiated in 1974 known as the United Mine Workers of America (“UMWA”) Agreement.³ Several survey sources, including the Department of Labor, state that in 2017 there were around 52 thousand miners in the United States.⁴ To compare, in the 1920s, a peak time period for the coal mining industry, there were over 800 thousand miners across the United States.⁵ Those that remain face significant cuts to their pension and health plan under the UMWA Agreement due to a steady

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¹ Molly Taft, *Coal companies are going bankrupt. What happens to the pensions they've promised miners?*, FAST COMPANY (July 24, 2019), <https://www.fastcompany.com/90381145/coal-companies-are-going-bankrupt-what-happens-to-the-pensions-theyve-promised-miners> [https://perma.cc/D4N6-EMHR].

² *Id.*

³ *Id.*

⁴ Bureau of Labor Statistics, *Employment, Hours, and Earnings from the Current Employment Statistics survey (National)*, DEP'T OF LAB. <https://data.bls.gov/timeseries/CEW102121001> [https://perma.cc/R5T7-4CHC] (last viewed Oct. 4, 2020); *Coal Mining*, DATA USA <https://datausa.io/profile/naics/coal-mining> [https://perma.cc/NM35-3QWA] (last viewed Oct. 4, 2020).

⁵ James A. Haught, *A Short History of Mining – and its decline – in West Virginia*, THE REG. HERALD (Mar. 30, 2017), https://www.register-herald.com/opinion/columns/a-short-history-of-mining---and-its/article_4c968cfd-8d8b-51c7-bccb-77e186ea61f7.html [https://perma.cc/WTT9-KHV9].

increase in the number of coal companies filing for bankruptcy in the 21st Century.⁶

In Ohio in 1890, the United Mine Workers of America (“UMW”) formed a national union to represent coal miners.⁷ In 1946, miners were seeking retirement and health benefits.⁸ The UMWA Agreement was signed into law and provided those benefits, but stipulated that the benefits would come from the miners’ most recent employer prior to their retirement.⁹ In 1974, the Agreement was split into two to guarantee pension plans and help prevent insolvency of the fund for miners who were still working and would not be retiring for some time.¹⁰ However, the projected life of this Pension Plan is dwindling and has been reliant on coal companies of today to keep it running.¹¹ This has become increasingly challenging as many companies are filing for bankruptcy.¹²

Most recently, in late October of 2019, Murray Energy filed for bankruptcy, making them the eighth coal company in just over one year to declare bankruptcy.¹³ Murray Energy was the last public funder of the UMWA Agreement, and as a result, miners’ pensions and health benefits will be in limbo and at the hands of the federal government.¹⁴

The original purpose of this pension plan was to provide miners with a source of income to deal with the repercussions of working in a dangerous industry that created severe health

⁶ Taft, *supra* note 1.

⁷ West Virginia State Archives, *West Virginia’s Mine Wars*, W. VA. DEPT OF ARTS, CULTURE, AND HIST. (2019), <http://www.wvculture.org/history/archives/minewars.html> [https://perma.cc/8HMV-KKG4].

⁸ *Coal Act*, UNITED MINE WORKERS OF AMERICA (2020), <http://umwa.org/formembers/pensions-retiree-info/coal-act/> [https://perma.cc/AZ35-FMSF].

⁹ *Id.*

¹⁰ Doug Jones, *The American Miners Act of 2019*, DOUG JONES SENATOR FOR ALA. <https://www.jones.senate.gov/imo/media/doc/116th%20Congress%20Miners%20Pensions%20AML%20one%20pager%201-2-19.pdf> [https://perma.cc/LS96-2C76] (last viewed Oct. 5, 2020).

¹¹ Taft, *supra* note 1.

¹² *Id.*

¹³ Taylor Telford & Dino Grandoni, *Murray Energy files for bankruptcy as coal’s role in U.S. power dwindles*, WASH. POST (Oct. 29, 2019), <https://www.washingtonpost.com/business/2019/10/29/coal-giant-murray-energy-files-bankruptcy-coals-role-us-power-dwindles/> [https://perma.cc/9FF3-FF9D].

¹⁴ *Id.*

issues later in life.¹⁵ The plan was created by the United Mine Workers of America, the national coal miner's union, as they bargained for pension protection through a national strike.¹⁶

As of now, there are no miners represented by unions in Kentucky.¹⁷ This lack of representation has led some coal companies to evade state and federal law in regard to the protection of workers' wages and pensions.¹⁸ In July of 2019, Blackjewel, a coal company based in West Virginia filed for bankruptcy and rescinded the paychecks of employed miners, including those in Kentucky.¹⁹ The company was out of compliance with a Kentucky law, which required them to have a protection fund for miners in the event of bankruptcy.²⁰ Without careful monitoring, the company's noncompliance went unchecked until it was too late, and miners were left without pay for multiple weeks.²¹

It is unlikely Kentucky is the only state facing this issue, as more and more miners are opting out of union membership and placing their trust in their employers and an often gridlocked Congress.²² However, in today's changing industry, with so many companies going bankrupt and little action being taken at the federal level, there is a need for greater monitoring and protection for the miners who may not be able to advocate for themselves.²³ Miners can no longer rely on the coal companies to provide for their pension and health rights.²⁴

¹⁵ Taft, *supra* note 1.

¹⁶ *Id.*

¹⁷ Erica Peterson, *Kentucky Doesn't Have Any More Working Union Coal Miners*, 89.3 WFPL (Feb. 26, 2015), <https://wfpl.org/kentucky-doesnt-have-any-more-working-union-coal-miners/> [https://perma.cc/F8J3-KCRV].

¹⁸ Will Wright, *No Kentucky coal company has complied with a law designed to protect miner wages*, LEXINGTON HERALD LEADER (Aug. 29, 2019, 1:36 PM), <https://www.kentucky.com/news/state/kentucky/article234398952.html> [https://perma.cc/J2KA-HLGS].

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Dylan Lovan, *No union mines left in Kentucky, where labor wars once raged*, WASH. POST (Sept. 5, 2015), https://www.washingtonpost.com/business/economy/closure-of-kentucky-s-last-unionized-coal-mine-may-be-ironic-sign-of-success/2015/09/05/8c1a1a42-5417-11e5-8c19-0b6825aa4a3a_story.html [https://perma.cc/G5Y9-EPGS].

²³ See Sarah Lazare, *Even in Bankruptcy, Coal Companies Can't Stop Selling Out Workers*, IN THESE TIMES (Dec. 12, 2019), <https://inthesetimes.com/article/coal-mining-industry-bankruptcies-workers-rights-american-miners-act> [https://perma.cc/8PBK-NAVT].

²⁴ *Id.*

In order to better understand the protections union membership has provided, and can provide to coal miners, Part I of this Note will discuss the history of labor unions in the United States, with a particular focus on coal miner unions in Kentucky and West Virginia. Part I will go through the rise, peak, and decline of these labor unions and discuss how union membership granted and protected the health and retirement rights of so many miners in the 20th Century.

Part II of this Note will discuss how these protections were codified first in the United Mine Workers of America Agreement and in later pieces of legislation up to the current Pension Plan that has been in effect since 1974. Finally, Part III of this Note will discuss potential solutions to the unstable and uncertain pension and health benefits guaranteed under 1974 Pension Plan and how the coal mining industry can be better protected in the future. Part III will conclude by showing the best solution for protecting miners' retirement and health benefits would be to reorganize a collective action group to provide the miners with better bargaining and advocacy power to create a long-term and adaptable solution with the ability to grow and change with the industry.

I. HISTORY OF LABOR UNIONS

A. *Creating a National Organization*

A labor union is often defined as a group of workers organized “for the purpose of advancing its members’ interests in respect to wages, benefits, and working conditions.”²⁵ Before the creation of national labor organizations, local trade unions were established among merchants with common trades as early as 1794.²⁶ These trade unions engaged in modern day functions of unions such as strikes, pickets, and close-shop business hiring practices.²⁷ The first national trade union was formed in 1834 but had little effect on securing workers’s rights until nationalization of businesses occurred decades later.²⁸ At the peaks of the Industrial

²⁵ Labor Union, MERRIAM-WEBSTER DICTIONARY (2020) <https://www.merriam-webster.com/dictionary/labor%20union> [<https://perma.cc/FEP9-B8JX>].

²⁶ Melvyn Dubofsky & Foster Rhea Dulles, LABOR IN AMERICA: A HISTORY 23 (Wiley-Blackwell ed., 8th ed. 2010).

²⁷ *Id.* at 23, 26.

²⁸ *Id.* at 53–54.

Revolution in the United States, the business market became a national market and it became clear to workers any meaningful organization would have to occur on a national basis.²⁹

The Industrial Revolution saw an increase in employment within the coal mines and on the railroads to keep up with the rise of national transportation.³⁰ However, the harsh working conditions and wages for the workers in these industries led to severe unrest and eventual upheaval.³¹ Specifically, in the 1870s and 1880s, miners and railroad workers engaged in a number of strikes across the nation to challenge their employers who were still greatly against labor organization.³²

Following these riots and strikes, there was a period of five years where trade unions and labor organizations tried a variety of ways to create a national labor organization.³³ But it was not until 1886 the American Federation of Labor (“AFL”) was created, and the modern form of labor unions emerged.³⁴ The original membership of the AFL started at 150,000 members and grew to 250,000 in just six years despite the counterattacks of the employers in each industry, the government, and the courts to prevent national organization from taking shape.³⁵

The period of national governmental and employer resistance lasted until 1901 when Theodore Roosevelt was elected President.³⁶ It appeared people across the nation were accepting the need for collection public and private action to meet the problems raised by industrialization and urban growth.³⁷ However, the working conditions of industries like the coal mines were still struggling to improve.³⁸ This became evident as many miners continued to strike, and often with increasing intensity, in

²⁹ *Id.* at 89.

³⁰ See Sean Patrick Adams, *The US Coal Industry in the Nineteenth Century*, EH.net <https://eh.net/encyclopedia/the-us-coal-industry-in-the-nineteenth-century-2/> [https://perma.cc/4GAQ-748C] (last viewed Oct. 4, 2020); *The Pullman Company-Railroad Jobs during the Industrial Revolution*, World Wide Rails, <https://worldwiderails.com/blog/railroad-jobs-during-the-industrial-revolution/> [https://perma.cc/7TMA-T7RF] (last viewed Oct. 4 2020).

³¹ Dubofsky, *supra* note 26, at 104–105.

³² *Id.* at 105–10.

³³ *Id.* at 141–45.

³⁴ *Id.* at 145.

³⁵ *Id.* at 147.

³⁶ *Id.* at 166.

³⁷ Dubofsky, *supra* note 26, at 167.

³⁸ *Id.*

Kentucky and West Virginia.³⁹B. *Unions in West Virginia and Kentucky*

The West Virginia and Kentucky coal industry has a long and storied history of opposition to labor unions.⁴⁰ Marked by years of bloody battles and poor working conditions, the miners in these states faced more casualties than most in their fight to unionize.⁴¹

i. West Virginia

The United Mine Workers of America (“UMW”) formed in 1890 to organize and provide representation for miners across the United States.⁴² The UMW failed to unionize in West Virginia on four different attempts.⁴³ It took twelve years for the first UMW workers to organize in West Virginia.⁴⁴ However, this was short lived as “mine guards” were put in place by employers to discourage union organizers.⁴⁵ By 1912, miners were ready to fight for UMW recognition.⁴⁶ In what is now known as the Paint Creek – Cabin Strike of 1912, miners went on strike and set up an armed camp with a list of demands.⁴⁷

The coal companies responded by evicting miners from company homes.⁴⁸ People were beaten and killed in a battle lasting over a year and a half.⁴⁹ Not even ten years later, the Battle of Blair Mountain broke out where more deaths occurred as the miners, who wore red bandanas and termed “red-necks” clashed with mine guards and company leaders.⁵⁰ In just a few short weeks of battle, over 1,200 miners were charged with

³⁹ See Cal Winslow, *A Brief History of Harlan County, USA*, LABOR NOTES (Aug. 14, 2019), <http://www.labornotes.org/blogs/2019/08/brief-history-harlan-county-usa> [<https://perma.cc/W5UD-8DCC>]; Lorraine Boissoneault, *The Coal Mining Massacre America Forgot*, SMITHSONIAN MAGAZINE, (Apr. 25, 2017), <https://smithsonianmag.com/history/forgotten-matewan-massacre-was-epicenter-20th-century-mine-wars-180963026/> [<https://perma.cc/E9SG-WU2W>].

⁴⁰ *See id.*

⁴¹ *Id.*

⁴² West Virginia State Archives, *supra* note 7.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ West Virginia State Archives, *supra* note 7, at 2.

⁴⁹ *Id.*

⁵⁰ *Id.* at 3.

indictments, some for murder and treason.⁵¹ Most of these charges never materialized into convictions, but it signaled a major defeat for the UMW organizers in southwestern West Virginia.⁵²

The UMW eventually succeeded in representing a majority of West Virginia miners.⁵³ However, the miners would continue to strike for their demands. In 1969, after the government, the coal companies, and even the UMW failed to address the connection between mining and black lung disease, miners went on strike.⁵⁴ Over 280 miners came together to march on West Virginia's capitol and demand legislation.⁵⁵ When the legislature produced a weak bill not addressing the issues, 40 thousand miners joined the strike.⁵⁶ The miners showed their power and reached Capitol Hill as Congress passed federal legislation regarding black lung and its association to coal mining.⁵⁷ This was to be one of the last true victories achieved by strike for the miners as the 1970s and 1980s saw an unprecedented decline in union organization efforts to protest.⁵⁸

ii. *Kentucky*

Kentucky's history was less unsettled, as the UMW was able to establish union representation in Kentucky with much less of a fight.⁵⁹ With the onset of the Great Depression in 1929, the jobs for miners in Kentucky were few and far in between, with some reports citing one in three miners were out of work.⁶⁰ Wages were low and company housing was scarce.⁶¹ As some became fed up with these conditions, many miners went on strike. In 1931, after failed representation and help from the UMW, some of these

⁵¹ *Id* at 3–4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Branko Marcetic, *The Top Labor Battles in West Virginia History*, JACOBIN MAG., (Mar. 4, 2018), <https://www.jacobinmag.com/2018/03/west-virginia-labor-history-teachers-strike> [https://perma.cc/S5J6-PVA7].

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ National Committee for the Defense of Political Prisoners, *Harlan Miners Speak: Report on Terrorism in the Coal Fields* (2008) [https://perma.cc/2JA2-JJBX].

⁶⁰ *Id.*

⁶¹ *Id.*

miners formed a Kentucky chapter of the National Miners Union (NMU).⁶²

The trouble began for them because the NMU was an affiliate of the American Communist Party.⁶³ Those associated with this union, although only a small portion, were subject to beatings, evictions, and threats.⁶⁴ The strike took a political turn and led to bloodshed.⁶⁵ Although this particular strike only lasted a little over a month, four people died from the attacks and the fight was not over.⁶⁶ Little was accomplished from this strike and led to more strikes and more bloodshed during the 1930s.⁶⁷ This decade is often referred to as “the Bloody Harlan years” and represents a time of great conflict between coal operators and their workers.⁶⁸ The conditions remained poor as the country was trying to pull itself out of the Great Depression, but this did not stop miners from continuing to protest for their needs.⁶⁹

There was a period of resurgence for the mine workers following the election of President Franklin D. Roosevelt and his New Deal legislation.⁷⁰ This brought jobs back to the mines and miners back to the unions.⁷¹ However, strikes and demands continued throughout the decades, often times with workers pushing for improvements in safety conditions or health benefits.⁷² One of the most notable strikes after 1950 was the Brookside Strike in 1973.⁷³ This strike, similar to those during the Bloody Harlan decade, occurred in Harlan County, Kentucky.⁷⁴

During the Brookside Strike, over 180 miners went to strike, as a subsidiary of the large Duke Energy Company refused to

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Remembering Bloody Harlan, Parallel Narratives*, <https://parallelnarratives.com/remembering-bloody-harlan/> [<https://perma.cc/PDW3-9PVB>] (last viewed Nov. 9, 2020).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Dubofsky, *supra* note 26, at 246.

⁷¹ *Id.* at 246.

⁷² *Id.* at 249–50.

⁷³ Cal Winslow, *No Neutrals in Harlan County*, JACOBIN MAG., (Aug. 8, 2019), <https://jacobinmag.com/2019/08/harlan-county-miners-history-strike-kentucky> [<https://perma.cc/X6DR-F3KR>].

⁷⁴ *Id.*

reach an agreement with the Brookside miners following their vote to join the UMW.⁷⁵ The strike lasted for a bitter 13 months and left one miner dead.⁷⁶ The miners were successful in their efforts to unionize.⁷⁷ However, along with the sentiment expressed during this decade in West Virginia, and with the rest of the nation, the old-style labor movement characterized by militant strikes and group demands was fading fast.⁷⁸

Again, Kentucky no longer has unionized coal miners as the last union office closed in 2015.⁷⁹ Many miners have remarked about Kentucky's deep history with unions and coal, and the historic battles that took place during the peak of the 20th Century.⁸⁰

iii. The Peak of Unionism

At the conclusion of the Great Depression, President Franklin D. Roosevelt took office and his New Deal legislation sparked hope in many for economic revival.⁸¹ The UMW, along with many other unions, took a major loss in membership during the Great Depression.⁸² However, by 1934, the UMW recouped 300,000 new members and was continuing to sign new union agreements in states like Kentucky and Alabama to expand their membership even further.⁸³ Following the passage of New Deal legislation, membership of the UMW increased to over 400,000 members.⁸⁴

After many years of UMW membership with the American Federation of Labor ("AFL"), a major strike in 1946 caused great tension between the two groups.⁸⁵ During the strike, the AFL's president took action putting over 400 thousand miners out of work, including those across Kentucky and West Virginia.⁸⁶ Following the strike, the UMW was hit by a \$3,500,000 fine;

⁷⁵ *Harlan County, KY, coal miners win affiliation with UMWA union*, GLOBAL NONVIOLENT ACTION DATABASE, <https://nvdatabase.swarthmore.edu/content/harlan-county-ky-coal-miners-win-affiliation-umwa-union-united-states-1973-1974> [https://perma.cc/743X-MREX] (last viewed Nov. 9, 2020).

⁷⁶ Cal Winslow, *supra* note 73.

⁷⁷ *Id.*

⁷⁸ Dubofsky, *supra* note 26, at 388–89.

⁷⁹ Peterson, *supra* note 17.

⁸⁰ *Id.*

⁸¹ Dubofsky, *supra* note 26, at 242.

⁸² *Id.* at 246.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 296.

⁸⁶ *Id.*

many miners saw this as the last straw with the AFL and subsequently severed ties of association.⁸⁷

Soon after, the UMW joined the opposing national labor organization, the Congress of Industrial Organizations (“CIO”).⁸⁸ The CIO, which formed in 1935, some fifty years after the formation of the AFL, was gaining support among industrial workers such as coal miners and railroad workers.⁸⁹ At the peak of unionization for industrial workers, the AFL merged with the CIO in 1955 to form what is known today as the AFL-CIO.⁹⁰ At the time of the merger, membership for industrial workers was over 2.5 million people.⁹¹

B. The Decline of Miner Representation

Following the merger into the AFL-CIO, the UMW saw a period of calmness and growth. However, in the late 1960s, perceptions were beginning to shift and support for the labor movement began to decline.⁹² As the country entered into the 1970’s, the old style of militant union strikes were in the past.⁹³ Although there were a few strikes, such as the Brookside Strike in Harlan County, Kentucky, the rate of militant strikes had declined tremendously.⁹⁴

By the end of the 1970s, several sources were claiming the national labor movement was simply a thing of the past.⁹⁵ One journalist remarked this sentiment in a 1978 magazine article entitled “The Last Days of the American Labor Movement.”⁹⁶ Other sources, especially those from within the national labor movement organization, stated the labor movement is having

⁸⁷ Dubofsky, *supra* note 26, at 321–22.

⁸⁸ *Id.*

⁸⁹ The Editors of Encyc. *Britannica*, *Am. Fed’n of Labor–Cong. of Indus. Orgs.*, ENCYC. BRITANNICA, INC. (Sept. 25, 2019), <https://www.britannica.com/topic/American-Federation-of-Labor-Congress-of-Industrial-Organizations#ref230618> [<https://perma.cc/2HVD-JAK8>].

⁹⁰ *Id.*; Dubofsky, *supra* note 26, at 341.

⁹¹ Dubofsky, *supra* note 26, at 337.

⁹² *Id.* at 345–46.

⁹³ *Id.* at 388–89.

⁹⁴ *Remembering Bloody Harlan*, PARALLEL NARRATIVES <https://parallelnarratives.com/remembering-bloody-harlan/> [<https://perma.cc/Z899-6UT9>] (last viewed Oct. 3, 2020).

⁹⁵ Dubofsky, *supra* note 26, at 388.

⁹⁶ *Id.* at 388–89.

“less and less impact on society” and “trade unionism appears today to be a largely spent force in the national life.”⁹⁷

After a tumultuous two decades where the UMW was in and out of national labor membership, the organization rejoined the AFL-CIO for good in 1989, but the celebration was short lived.⁹⁸ One of the most well-known examples of old-style labor strikes in recent history is the 1988-89 Pittston Coal Strike.⁹⁹ The Pittston Coal Company was trying to get rid of its obligations to the miners’ health fund.¹⁰⁰ In response, miners picketed, gained local community support, and elicited the support of national labor organizations.¹⁰¹

Pittston eventually conceded to the miners, and the victory secured desperately needed healthcare for the miners.¹⁰² This was a much-needed victory for the UMW and labor movement in general. At the time, the UMW stated the labor movement was “in dire need of a victory” as UMW members were “fighting for their own jobs and a way of life in southwest Virginia and southern West Virginia and eastern Kentucky.”¹⁰³

This comment likely resonated with miners in the area and industrial workers across the United States. The 1970s and 1980s were a period of shift and decline for the labor movement and for union representation, every win was a big one as the labor movement was trying to stay alive in changing times.¹⁰⁴ Unfortunately, the Pittston strike is just one example of a win, and as Dubofsky and Dulles point out, for every victory during this decade, there were losing strikes and failures to obtain the requested demands, thus, pushing union membership further down.¹⁰⁵

In the 1990s, the old industrial style unions were facing opposition from the new environmentalist union groups.¹⁰⁶ This

⁹⁷ *Id.*

⁹⁸ *Id.* at 398.

⁹⁹ *Id.* at 397.

¹⁰⁰ *Id.*

¹⁰¹ Dubofsky, *supra* note 26, at 397.

¹⁰² *Id.*

¹⁰³ Debra McCown, *1989 Pittston Coal Strike A Battle For Workers' Rights*, BRISTOL HERALD COURIER (Sept. 6, 2009), https://www.heraldcourier.com/news/pittston-coal-strike-a-battle-for-workers-rights/article_f9bf3c00-3413-5d9c-b787-e52fbb99a07b.html [<https://perma.cc/5H5D-FNSS>].

¹⁰⁴ *Id.*

¹⁰⁵ Dubofsky, *supra* note 26, at 397.

¹⁰⁶ *Id.* at 402–03.

opposition created division in an already fragile group where people were dividing not only by industry, but also by political affiliation.¹⁰⁷ This split the AFL-CIO membership even further and caused a serious loss of UMW membership.¹⁰⁸ The sentiment at the time was the UMW would not survive unless they could create a balance between the old-style unionism and new-style leadership.¹⁰⁹

Unfortunately, the efforts to establish a lasting balance seem to have been unsuccessful. As of 2015, there were no union members in any Kentucky mines.¹¹⁰ Additionally, as of 2017, there were roughly only 12 thousand miners left in West Virginia.¹¹¹ These numbers are striking, but a clear sign of the decline began nearly fifty years ago. However, there are still miners, active and retired, relying on their pension and contribution to the coal industry for survival.

II. THE CURRENT LEGISLATION

A. *The United Mine Workers of America Agreement*

The UMW members came to an agreement with President Harry Truman in 1946 through a series of negotiations and demonstrations.¹¹² The purpose of this agreement was to guarantee retirement benefits would be given to miners from their last employer prior to retirement.¹¹³ This process remained mostly unchanged until 1974, when UMW miners came together to express their concerns about the legislation's potential for insolvency.¹¹⁴ To ease the concerns of the miners, the 1974 UMW

¹⁰⁷ *Id.* at 402.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 434.

¹¹⁰ Peterson, *supra* note 17.

¹¹¹ James A. Haught, *A Short History of Mining – and its decline – in West Virginia*, THE REGISTER HERALD (Mar. 30, 2017), https://www.register-herald.com/opinion/columns/a-short-history-of-mining---and-its/article_4c968cfd-8d8b-51c7-bccb-77e186ea61f7.html [<https://perma.cc/387C-GKKD>].

¹¹² *Coal Act, United Mine Workers of America*, UNITED MINE WORKERS OF AMERICA <http://umwa.org/for-members/pensions-retiree-info/coal-act/> [<https://perma.cc/UVX2-DWEE>] (last viewed Sept. 29, 2020).

¹¹³ *Id.*

¹¹⁴ Jones, *supra* note 10.

Pension Plan took funds from an existing plan and secured them for miners who retired after 1976.¹¹⁵

The 1974 plan remained unchanged for decades, as it worked for many of the miners entering retirement.¹¹⁶ However, during the 2008 recession, the Pension Plan lost \$2 billion dollars, and concern among UMW miners rose again.¹¹⁷ Following the recession, a local news source reported the UMWA Act could be insolvent by 2022, leaving miners without pension and health benefits.¹¹⁸ It noted the projected insolvency point will likely occur even earlier with each passing coal company that declares bankruptcy.¹¹⁹ The more companies declaring bankruptcy, the less funding the 1974 Pension Plan receives, as fewer companies owe obligations to the legislation.¹²⁰

As of 2019, it was estimated these bankruptcies have, between 2008 and 2018, cost the 1974 Pension Plan an additional \$4 billion dollars.¹²¹ In the last twelve months alone, eight companies have declared bankruptcy.¹²² These bankruptcies have occurred despite the rollbacks of regulations put in place during President Barack Obama's administration.¹²³

One report stated, "researchers at Columbia University found in a 2017 study that the four biggest rules enacted by the Obama administration on coal-mining firms and coal-fired power plants accounted for only about a three and a half percent decline in U.S. production. Instead, the downturn was mostly due to lower demand for U.S. coal at home and abroad, especially in China."¹²⁴ These bankruptcies are a reflection of the country's choice to utilize other sources of energy that are cheaper, easier, and more sustainable to produce.¹²⁵ More and more companies seek to

¹¹⁵ *Id.*

¹¹⁶ Jessica Wehrman, *Nearly 100,000 coal miners at risk of losing pension money by 2022*, Dayton Daily News (May 12, 2019), <https://www.daytondailynews.com/news/national-govt-politics/nearly-100-000-coal-miners-risk-losing-pension-money-2022/cD0EujbZJ859cKMUrrwZ2H/> [<https://perma.cc/XA92-TE6S>].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Jones, *supra* note 10.

¹²¹ *Id.*

¹²² Clifford Krauss, *Murray Energy Is 8th Coal Company in a Year to Seek Bankruptcy*, N. Y. TIMES (Oct. 29, 2019), <https://www.nytimes.com/2019/10/29/business/energy-environment/murray-energy-bankruptcy.html> [<https://perma.cc/V5YB-NLS4>].

¹²³ Telford, *supra* note 13.

¹²⁴ *Id.*

¹²⁵ *Id.*

change to renewable energy sources due to growing technology and reduced operation costs.¹²⁶

B. The Federal Coal Mine Health and Safety Act of 1969

President Richard Nixon signed the Federal Coal Mine Health and Safety Act into law in December of 1969.¹²⁷ The legislation was drafted to provide some much-needed reform to the working conditions in the mines and to promote and protect miner safety.¹²⁸ This legislation was an update to the original Federal Coal Mine Safety Act of 1952 signed by President Truman.¹²⁹ Both laws related to the federal government's ability to inspect the coal mines in operation and to sanction or temporarily shut down any mines out of compliance.¹³⁰ Although neither of these laws directly relate to the health and retirement benefits of the miners, the 1969 legislation had a dramatic impact in recognizing the need for better health and safety protections for the workers.¹³¹

Mine workers were aware of the egregious violations within their workplace and relied on the federal government to protect their safety.¹³² One author eloquently stated, "coal miners were not passive actors, but rather conscious protestors who actively challenged the institutions who failed to protect them on the job... they wanted those institutions to be more attentive to their concerns about the working conditions."¹³³

During the 1970s, it became clear the Bureau of Mines, the federal agency tasked with inspecting the operational coal mines, was very careless on its assessment and follow-through for violations, particularly among non-union mine operators.¹³⁴ This caused a great deal of concern among union member miners, as

¹²⁶ Krauss, *supra* note 122.

¹²⁷ Richard Fry, *Dissent in the coalfields: miners, federal politics, and union reform in the United States, 1968–1973*, 55 LABOR HISTORY 173, 173 (2014).

¹²⁸ *Id.*

¹²⁹ *Id.* at 176.

¹³⁰ *Id.*

¹³¹ *Id.* at 177.

¹³² *Id.* at 175.

¹³³ Fry, *supra* note 127, at 175.

¹³⁴ *Id.* at 177–78.

they feared their operators would leave the union to avoid complying with the inspection requirements.¹³⁵

One of the UMW safety coordinators for Kentucky wrote to his Congressmen “I am deeply concerned over the conditions that exist in the non-union coal mines in this district. We have coal miners every day that are coming from non-union mines and obtaining employment in our union operations who tell us of the deplorable conditions that the non-union coal miners are working under.”¹³⁶ The safety operator continues on to say the federal government is deliberately evading inspections of non-union members.¹³⁷ This incongruent treatment between union represented mines and non-unionized mines could certainly be a major factor for the decline in UMW membership during the 1970s.

Later in the decade, more miners were expressing concern to the federal government about the growing rate of miners with “black lung” disease, an occupational disease caused by the inhalation of coal dust.¹³⁸ After several outreach attempts, Congress passed the Black Lung Benefits Act in 1972.¹³⁹ For the first time, this secured health benefits directly from the federal government and coal operators for miners who contracted black lung and, consequently, the potential years of respiratory issues and chronic medical problems later in life.¹⁴⁰

Unfortunately, the process for obtaining these benefits is often long and arduous, regularly met with strong opposition by the coal companies attempting to prolong their time in court and avoid paying for miners’ healthcare.¹⁴¹ Many reports show miners have died from the disease while waiting for a decision on their black lung benefits under the current legislation.¹⁴² This legislation simply shows the lack of acceptable healthcare protections for miners who spent years in a dangerous occupation with the expectation their employer and the government would provide both retirement and health benefits after retirement.

¹³⁵ *Id.* at 178.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Fry, *supra* note 127, at 173.

¹³⁹ *Id.* at 181.

¹⁴⁰ *Id.*

¹⁴¹ *Black Lung Benefits*, APPALACHIAN CITIZENS’ LAW CENTER: MINE SAFETY & HEALTH (2020), <https://appalachianlawcenter.org/black-lung-benefits/> [https://perma.cc/TXR5-D9RN].

¹⁴² *Id.*

C. *The Current Plan for Pension Protection*

As mentioned, the current Pension Plan for miners is based under the 1974 Pension Plan.¹⁴³ However, with the growing number of bankruptcies of major coal companies, the future of this legislation is in jeopardy. Most notably, as of September 2019, Murray Energy Company was the last funder of the 1974 Pension Plan.¹⁴⁴ But at the end of October 2019, they declared Chapter 11 bankruptcy.¹⁴⁵

Now, the pensions and health care benefits of miners are once again at risk and uncertain.¹⁴⁶ Murray Energy estimated its actual and potential pension and benefit liabilities as \$8 billion.¹⁴⁷ It is fairly uncertain what will happen to the miners' Pension Plan.¹⁴⁸ Although it is very likely to become insolvent rather quickly in 2020, the next steps after insolvency are unknown. Murray Energy, since filing Chapter 11 is no longer funding the Pension Plan.¹⁴⁹

One potential solution is the Pension Benefit Guaranty Corporation ("PBGC"), a federal agency, can take in the miners to secure their pensions during bankruptcy proceedings.¹⁵⁰ However, this is uncertain because PBGC is not required to take on multiemployer-funded pension plans such as the 1974 Pension Plan.¹⁵¹ Murray Energy was initially seeking \$350 million to continue to operate but it is unlikely any of that money will go to protecting the 1974 Pension Plan in order to just let it reach insolvency.¹⁵²

A representative for Murray Energy recently stated they are "simply unable to repay" their liabilities, leaving miners nervous,

¹⁴³ See Matt Egan, '*Nervous and scared.*' *Coal workers fear for pensions after Murray Energy bankruptcy*, CNN BUS. (Nov. 1, 2019, 10:43 AM), <https://www.cnn.com/2019/11/01/business/murray-energy-coal-bankruptcy-pension/index.html> [https://perma.cc/94WH-MV2C].

¹⁴⁴ Wehrman, *supra* note 116.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Vince Sullivan, *Murray Energy Files \$1.7B Baseline Offer Under Ch. 11 Plan*, LAW 360 (Dec. 4, 2019, 8:46 PM), <https://www.law360.com/articles/1225417/murray-energy-files-1-7b-baseline-offer-under-ch-11-plan> [https://perma.cc/2HC7-C2FW].

¹⁴⁸ Egan, *supra* note 143.

¹⁴⁹ Wehrman, *supra* note 116.

¹⁵⁰ Egan, *supra* note 143.

¹⁵¹ *Id.*

¹⁵² Telford, *supra* note 13.

scared, and frustrated with little hope their lifelong employment will continue to provide for their healthcare and retirement.¹⁵³ The estimated sale of Murray Energy is \$1.7 billion and would only cover the assets of the company, and under the current system of using legislation, this leaves the miners and their pensions effectively in limbo until lawmakers come up with another solution.¹⁵⁴ The Murray Energy bankruptcy proceedings could last into March of 2020 before a definitive answer is obtained.¹⁵⁵

III. STRONGER POTENTIAL SOLUTIONS THAN THE CURRENT LEGISLATION

A. *Proposed Legislative Change to the UMWA Act*

Several pieces of legislation have been introduced by legislatures in Congress to try to secure funding under the 1974 Pension Plan. Some have passed and some have not, but none of the below Acts have garnered a stable and long-term promise of pension and health benefits. In 1992, President George W. Bush passed the Coal Industry Retiree Health Benefit Act (the Coal Act).¹⁵⁶

The Coal Act ensured retirement and health benefits for miners (and their surviving spouses in the event of death) even if the company they work for goes out of business.¹⁵⁷ The Act was passed in response to the Pittston Strike of 1989, where the Pittston Coal Company tried to evade their responsibility to pay retirement benefits to their miners.¹⁵⁸ The Coal Act was the first major change to the 1974 Pension Plan, enacted as an attempt to calm the concerns of miners as they prepared for retirement.¹⁵⁹ Little was done after this Act for more than two decades.¹⁶⁰ It was

¹⁵³ Wehrman, *supra* note 116.

¹⁵⁴ Sullivan, *supra* note 147.

¹⁵⁵ *Id.*

¹⁵⁶ *Coal Act*, UNITED MINE WORKERS OF AMERICA, <http://umwa.org/formembers/pensions-retiree-info/coal-act/> [https://perma.cc/JG6N-XPZ9] (last viewed Nov. 10, 2020).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Wehrman, *supra* note 116.

not until after the 2008 economic recession miners once again became concerned about their future benefits.¹⁶¹

The current state of events and period of mass uncertainty is not a new occurrence for coal miners. In April of 2017, 22,600 miners came close to losing their retirement and health benefits as the 1974 Pension Plan nearly ran out of money.¹⁶² In order to try to protect their pensions and healthcare benefits, several miners, both retired and current, went to Capitol Hill to advocate for Congress to continue funding this pension plan through the Miners Pension Protection Act.¹⁶³

The Miners Pension Protection Act did not provide any real substantive change to the existing legislation under the 1974 Pension Plan, but did secure continued funding from other sources besides the coal operators themselves.¹⁶⁴ With only a few days to spare before the loss of funding occurred, Congress passed the Miners Pension Protection Act.¹⁶⁵ Although this was a victory for the miners, it is simply a temporary band-aid on the larger issue as the coal industry is once again facing this issue of insufficient funding.

It soon became clear the proposed sources were not going to be able to provide the needed funding and so another piece of legislation was introduced in the same year. The American Miners Pension Act was introduced but failed to pass in the Senate.¹⁶⁶ This would have amended the plan to secure funding for 43,000 miners in Kentucky, West Virginia, and Ohio.¹⁶⁷ The bill would have required consistent annual funding from the United States Treasury Department, one of the most permanent

¹⁶¹ *Id.*

¹⁶² Valerie Volcovici, *U.S. Congress secures health benefits for coal miners*, REUTERS (May 1, 2017, 12:40 PM), <https://www.reuters.com/article/us-usa-budget-miners-idUSKBN17X20E> [<https://perma.cc/V3PG-FHV7>].

¹⁶³ Heidi Przybyla, *Coal workers fight for benefits as industry struggles under Trump*, NBC NEWS (Aug. 21, 2019), <https://www.nbcnews.com/politics/donald-trump/coal-workers-fight-benefits-industry-struggles-under-trump-n1044576> [<https://perma.cc/S5ZJ-8YND>].

¹⁶⁴ *Id.*

¹⁶⁵ Press Release, Mark R. Warner, Warner & Kaine Introduce Miners Pension Protection Act (May 11, 2017), <https://www.warner.senate.gov/public/index.cfm/2017/5/warner-kaine-introduce-miners-pension-protection-act> [<https://perma.cc/G59J-D5EM>].

¹⁶⁶ Ohio Valley Resource, *Bipartisan Bill Would Prop up Coal Miners' Pensions*, UNITED MINE WORKERS OF AMERICA umwa.org/news-media/news/bipartisan-bill-prop-coal-miners-pensions/ [<https://perma.cc/W4DQ-U25Y>] (last viewed Sept. 23, 2020).

¹⁶⁷ *Id.*

solutions proposed thus far.¹⁶⁸

In January of 2019, House members introduced the American Miners Act of 2019 to create a new plan of protection for the 1974 Pension Plan in light of the 2018 bankruptcies.¹⁶⁹ This bill was passed by the Senate in December of 2019 and did a decent job of securing funding for 92,000 miners, including some in Kentucky.¹⁷⁰ This legislation incorporated some of the goals of the 2017 bill, including appropriations from the United States Treasury Department.¹⁷¹

However, one potential issue could stem from this legislation is the inclusion of miners. When this was passed into law it only was stated to protect the miners from the 2018 bankruptcies.¹⁷² There have been several other bankruptcies, including some very large companies since January of 2018 and thousands more are now unprotected. This legislation was projected to replace the 1974 Pension Plan when it reached insolvency, which at the time was predicted to be 2022.¹⁷³

However, in light of recent events, as mentioned, insolvency may occur earlier. It will be interesting to see how Congress appropriates the funding for the hundreds of thousands of retired and working miners in the coming years and if they will be able to take on the pension and health benefits in time prior to insolvency of the Pension Plan. Many hope this legislation will be a lasting solution, but any permanent success remains unclear.

Although the most recent legislation received positive media attention, there are several uncertainties are still unanswered in light of recent events in 2019, including the bankruptcy of Murray Energy. Legislation is still an uncertain route for long-term protection, and thus alternatives should be considered.

¹⁶⁸ American Miners Act of 2019, S. 27, 116th Cong. (2019).

¹⁶⁹ Press Release, David B. McKinley (R-W. Va.), McKinley's Miners Pension Bill Advances Out of Committee (Oct. 23, 2019) <https://mckinley.house.gov/news/documentsingle.aspx?DocumentID=2683> [<https://perma.cc/Y24W-LR5P>].

¹⁷⁰ Conner Farrell, *McConnell announces 'Bipartisan American Miners Act of 2019'*, WHAS 11 NEWS (ABC) (Dec. 17, 2019, 5:11 PM), <https://www.whas11.com/article/news/politics/mcconnell-announces-bipartisan-american-miners-act-of-2019/417-679820ba-4f75-4952-9098-00b453e91782> [<https://perma.cc/W2AU-ED8H>].

¹⁷¹ American Miners Act of 2019, *supra* note 168.

¹⁷² *Id.*

¹⁷³ Press Release, *supra* note 169.

B. Resurgence of Collective Bargaining Entities

Based on the many failed or uncertain attempts at the federal legislature to secure and protect funding for the pensions and healthcare benefits for retired coal miners, perhaps a different route should be considered for a solution. There are several areas of evidence above to show miners are better protected when they are under the representation of a labor union. For example, the Bureau of Miners was closely inspecting the union operated mines in the 1970s, which better protected the health and safety of miners.¹⁷⁴

On the other hand, those at non-union mines were subject to “deplorable conditions” and far more likely to experience workplace accidents and fatalities.¹⁷⁵ Another example from the peak era of the labor movement, is how those protected by the UMW were better equipped to demand better pay when their wages were remaining stagnant.¹⁷⁶ The ability to collectively demand change is historically more successful than an individual demand against a large multimillion-dollar industry.

As mentioned, there are no represented coal miners left in Kentucky, and there are very few left in West Virginia.¹⁷⁷ Therefore, it would seem difficult at the outset to try reorganizing a group of workers in the region. However, in light of recent events such as the several bankruptcies and the imminent loss of pension benefits and healthcare protections, perhaps miners would be more willing to consider the alternative working for so many generations before them. By reorganizing into a union, the movement could better argue for protection and continued funding at the federal level. The current state of affairs is impacting not only the already retired miners, but also those still working in the mines with years left before retirement. This would allow both current miners and retired miners to join together to demand better conditions, much like in past generations.

Although this may seem like a large task, other industries in recent years have been able to reorganize members and rebuild

¹⁷⁴ Fry, *supra* note 127, at 178.

¹⁷⁵ *Id.* at 179.

¹⁷⁶ NATIONAL COMMITTEE, *supra* note 59, at 23–24.

¹⁷⁷ Peterson, *supra* note 17; Haught, *supra* note 111.

their membership up from catastrophic lows.¹⁷⁸ Within the transportation industry in particular, union membership is actually on the rise for the first time in years.¹⁷⁹ One British newspaper reported union membership in the US “is back because large numbers of people are fed up with soaring inequality, retirement insecurity (fewer than half of employees have access to a company pension scheme), rising costs of healthcare that is relatively poor by global standards and a sense of economic vulnerability.”¹⁸⁰

The same article stated it is mainly young people facing underemployment who are the backbone of the resurgence.¹⁸¹ So, although the people fighting for the revival of old labor unions are not from the same demographic categories as they were in the 1970s, the cause has essentially remained the same. They were advocating for better working conditions, retirement, and health benefits back then, and new people are demanding the same today.¹⁸²

One of the most influential transportation union sectors comes from the airline industry and a leader who is inspiring many to join her cause. Sara Nelson, President of the Association of Flight Attendants has not only captured the attention of other airline employees, but the media as well.¹⁸³ She is pushing for airline members to organize on the ground in their workplace and demand change.¹⁸⁴ She has led picket strikes and speeches outside airports in the District of Columbia.¹⁸⁵ She has helped airline union membership soar in recent years.¹⁸⁶ Many presume she will seek the presidency in the AFL-CIO in October of

¹⁷⁸ Bob Hennelly, *Union Gains in Airline Industry Seen As Symptomatic of Labor Resurgence*, THE CHIEF (July 29, 2019), https://thechiefleader.com/news/news_of_the_week/union-gains-in-airline-industry-seen-as-symptomatic-of-labor/article_5d030e2a-ae5a-11e9-9cb8-0356d81af708.html [https://perma.cc/GS2Z-ZEMB].

¹⁷⁹ Rana Foroohar, *Organised Labour has Returned*, FINANCIAL TIMES (Sept. 22, 2019), <https://www.ft.com/content/2ce47220-dbb3-11e9-8f9b-77216ebe1f17> [https://perma.cc/9SFM-E6MS].

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Richard Buddenhagen, *Sara Nelson, the new face of labor unions*, CBS NEWS (Sept. 1, 2019, 9:24 AM), <https://www.cbsnews.com/news/sara-nelson-the-new-face-of-labor-unions-association-of-flight-attendants-cwa/> [https://perma.cc/GH7V-B2YF].

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

2021.¹⁸⁷ If Nelson were to be elected, there is a strong potential her democratic ways of inspiring union membership could penetrate to other industries, including the mining industry.

Nelson has been a supporter of the UMW for nearly a decade and helped advocate for their pension protection.¹⁸⁸ This could provide the push the mining industry needs to increase union membership just like the airline industry has experienced. Democratic organizing simply means involvement in, and access to, the decision-making process of the organization. A revival of membership and enthusiastic grassroots organizing such as this could help secure the proper health and retirement benefits the industry desperately needs without depending on the companies themselves to fund such programs.

Data and news stories like the foregoing counter the argument the labor movement and unionization is a thing of the past, and has been since the 1970s. Instead, it seems clear from recent data and the grassroots democratic organizing seen in various industries that the labor movement is on the upswing once again.¹⁸⁹

In the 1970s, the UMW saw one of the biggest pushes for democratic organizing from its members.¹⁹⁰ Many miners were fed up and wanted change.¹⁹¹ They wanted proof their voices matter and sought it through an upheaval and overhaul of the union.¹⁹² While reflecting on the 1970s UMW shift, one author wrote “democracy is the most effective means of guaranteeing that an organization will have accurately and consistently represent the interests of the membership, something the UMW leadership had failed to do. For this reason, democracy became the mechanism dissenting miners hoped to remake their union.”¹⁹³ This sort of language has been in the media recently as

¹⁸⁷ *Id.*

¹⁸⁸ *See generally id.*

¹⁸⁹ Foroohar, *supra* note 179.

¹⁹⁰ PAUL F. CLARK, *THE MINERS’ FIGHT FOR DEMOCRACY: ARNOLD MILLER AND THE REFORM OF THE UNITED MINE WORKERS 1* (N.Y. State Sch. of Indus. and Labor Relations, Cornell Univ.) (1981).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 1–2.

well, not only regarding the airline industry described above, but in others across the AFL-CIO.¹⁹⁴

The miners recognized how any change they wanted to see would require active participation on their part.¹⁹⁵ They needed to take calculated steps to create a major wave of change. This is not an impossible task for those still in the profession today. The miners of today would do well to look back on history and try again to ignite a desire and demand for the protections they seek.

The constant state of uncertainty surrounding retirement and health benefits is currently the norm, but it does not have to be. Workers who give several years to one industry deserve these very basic protections other industries grant almost uniformly and with ease. Now would be the perfect time to organize and gather support for union membership, as the Murray Energy bankruptcy has created an inevitable end to the 1974 Pension Plan and there is no guarantee the Pension Benefit Guaranty Corporation will take on the miners' program.¹⁹⁶ With so much current uncertainty, there is a perfect opportunity to step back and consider every possible solution, rather than continuing with the same legislative pattern failing so many times before.

Another counterargument to this proposal is how some may feel the coal mining industry is dying and cannot be saved by labor unionization because there are not enough members in the Appalachian region to organize. But the sentiments of the workers will resemble the sentiments of their leadership. Current union leaders, such as Nelson are focused on organizing the unorganized.¹⁹⁷ Given the grassroots organizing from miners in the region, which is backed by union leadership, this counterargument seems out of step with the current efforts to raise membership.¹⁹⁸

It would almost certainly require a group dynamic to first create the labor demands and then advocate together until they

¹⁹⁴ See, e.g., America's Labor Movement Will Defend America's Democracy, AFL-CIO Executive Council Statement (Oct. 19, 2020), <https://aflcio.org/about/leadership/statements/americas-labor-movement-will-defend-americas-democracy> [<https://perma.cc/2QMC-YT87>].

¹⁹⁵ *Id.* at 2.

¹⁹⁶ Egan, *supra* note 143.

¹⁹⁷ See generally Tom Trottier, *Sara Nelson and the Future of American Labor*, SOCIALIST REVOLUTION (Aug. 1, 2019), <https://socialistrevolution.org/sara-nelson-and-the-future-of-american-labor/> [<https://perma.cc/A43N-S2B6>]; see Buddenhagen, *supra* note 183.

¹⁹⁸ See Trottier, *supra* note 197.

are satisfied. The miners in Kentucky or West Virginia alone would be a large enough group to make this happen and based on the recent trend in increased union membership, this solution is all the more plausible and practical.¹⁹⁹

CONCLUSION

The Appalachian regions in Kentucky and West Virginia have a long history rooted in the coal industry. This history intertwines and often clashes with the history of labor unionization in the two regions. For more than a century, coal miners have fought for and earned their union membership. Membership in these unions, particularly in the UMW, provided various protections for many years by giving the miners the ability to advocate their demands against a very large industry. Better and safer working conditions were earned through strikes, battles, and agreements.

Retirement benefits and health plans were created with the help of collective bargaining by the UMW to deal with the major diseases and after-effects caused by working in coal mines, such as black lung disease.²⁰⁰ But, eventually, the UMW membership became less popular and began to decline.²⁰¹ Many miners felt protected and content with the current status of their work.²⁰² Times have since changed. The coal mining industry is facing major bankruptcies and continued losses to the 1974 Pension Plan, which is supposed to provide for their retirement and health care.²⁰³ After several pieces of legislation have failed to correct this issue or provide any real long-term protection,²⁰⁴ perhaps it is time to consider a different type of solution.

There is a growing wave of increased union membership across the United States; numbers are at a fifteen-year high.²⁰⁵ People are finding collective bargaining is beneficial and effective

¹⁹⁹ See Fooroochar, *supra* note 179; see Winslow, *supra* note 39; see Boissoneault, *supra* note 39.

²⁰⁰ Marcetic *supra* note 54.

²⁰¹ *Id.*

²⁰² Coal Act, *supra* note 112.

²⁰³ Telford, *supra* note 13.

²⁰⁴ See Ohio Valley Resource, *supra* note 166; see Press Release, *supra* note 165.

²⁰⁵ Fooroochar, *supra* note 179.

for getting their demands met in their respective industries.²⁰⁶ There is no reason the coal industry cannot take part in this resurgence. Although there would certainly be obstacles, a resurgence of labor unions in the Appalachian region could create the permanent solution so many miners desperately seek. Although the coal industry is declining rapidly, so long as there are workers who give their time to a dangerous industry, they deserve proper pensions and healthcare benefits just like any other employee. The strength of collective advocacy could help them protect themselves and provide a lasting solution for the first time in decades.

²⁰⁶ *Id.*