

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

~~TARA K COAL COMPANY~~

and

Cases 11--CA--13497 *and*
11--CA--14211

~~UNITED MINE WORKERS OF AMERICA~~
DISTRICT 28

May 9, 1991

DECISION AND ORDER

By Chairman Stephens and Members Crowcraft and Smith
Upon charges filed by United Mine Workers of America District 28 on

September 5, 1989, and January 2, 1991, in Cases 11--CA--13497 and 11--CA--14211, respectively, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing February 19, 1991, against Tara K Coal Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act ¹ Although properly served copies of the charges and complaint, the Respondent has failed to file an answer.

On March 25, 1991, the General Counsel filed a Motion for Summary Judgment. On March 28, 1991, the Board issued an order transferring the

¹ By letter dated May 16, 1990, the Union requested withdrawal of the charge in Case 11--CA--13497 as part of an adjustment between the Respondent and the Union. On June 20, 1990, the Acting Regional Director issued an order conditionally approving withdrawal request and withdrawing complaint and notice of hearing, conditionally approving the Union's withdrawal request subject to performance of the adjustment between the parties. By letter dated February 15, 1991, the Regional Director revoked the order conditionally approving withdrawal request and withdrawing complaint and notice of hearing and reinstated the complaint and notice of hearing in Case 11--CA--13497 because of the Respondent's failure to make installment payments pursuant to the adjustment described above.

proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the . . . complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated March 6, 1991, notified the Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Virginia corporation, is engaged in the mining of coal at its facility in Wise County, Virginia, where, during the 12-month period ending February 19, 1991, it received goods and raw materials valued in excess of \$50,000 directly from points outside the Commonwealth of Virginia, and from where, during the same period, it shipped products valued in excess of \$50,000 directly to points outside the Commonwealth of Virginia. We find that the

Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

At all times since September 8, 1988, the Union has been the exclusive collective-bargaining representative of the employees in the unit described below and has been recognized as such by the Respondent. Such recognition has been embodied in a collective-bargaining agreement entitled the National Bituminous Coal Wage Agreement of 1988, which is effective by its terms until February 1, 1993. The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by Respondent), repair and maintenance work normally performed at the mine site or at the central shop of Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, all professional employees, guards and supervisors as defined in the Act.²

At all times material, the Union, by virtue of Section 9(a) of the Act, has been and is the exclusive representative of the unit employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

² The phrase "'and transportation of coal'" was inadvertently omitted from the unit description in the consolidated complaint.

B. The Violation

Since about April 1, 1989, and continuing thereafter, the Respondent has refused to bargain collectively with the Union as the unit employees' exclusive representative by failing to remit to the Union dues deducted from employees' pay as required by the collective-bargaining agreement described above.

By failing and refusing to remit to the Union dues deducted from employees' pay in accordance with the collective-bargaining agreement, the Respondent has failed and refused and is failing and refusing to bargain collectively with the representative of its employees, in violation of Section 8(a)(5) and (1) of the Act.

Conclusion of Law

By failing and refusing to remit to the Union dues deducted from employees' pay, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to remit to the Union the dues deducted from employees' pay since April 1, 1989, in accordance with the National Bituminous Coal Wage Agreement of 1988, with interest as provided in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Tara K Coal Company, Norton, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit to the Union dues deducted from employees' pay in accordance with the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union the dues deducted from employees' pay since April 1, 1989, in accordance with the National Bituminous Coal Wage Agreement of 1988, in the manner set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount due under the terms of this Order.

(c) Post at its facility in Norton, Virginia, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 9, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to remit to United Mine Workers of America District 28 dues deducted from our employees' pay in accordance with the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union the dues we have deducted from our employees' pay since April 1, 1989, in accordance with the National Bituminous Coal Wage Agreement of 1988, plus interest.

TARA K COAL COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 251 North Main Street, Room 447, Winston-Salem, North Carolina 27101-3986, Telephone 919--631--3212.