

Rebb Energy, Inc. and United Mine Workers of America, District 17, Sub-District 3. Case 9-CA-28073

May 10, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

Upon a charge filed by the Union on November 29, 1990, the General Counsel of the National Labor Relations Board issued a complaint on January 10, 1991, against the Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On April 1, 1991, the General Counsel filed a Motion for Summary Judgment. On April 4, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company 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 shall so be 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 14, 1991, notified the Company that unless an answer was received by March 27, 1991, a Motion for Summary Judgment would be filed. In the absence of good cause being shown for this 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 Company, a corporation with its principal office in Logan, West Virginia, is engaged in mining coal in the vicinity of Stirrat, West Virginia. During the past 12-month period, the Respondent, in the course and conduct of its business operations, sold and shipped from its Stirrat, West Virginia facility products, goods, and materials valued in excess of \$50,000 directly to

W. P. Coal Company, a nonretail West Virginia enterprise which, in turn, annually sells and ships products, goods, and materials valued in excess of \$50,000 from its West Virginia facility directly to points outside the State of West Virginia. We find that the Company 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

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes 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 (except by waterway or rail not owned by [Respondent]), repair and maintenance work normally performed at the mine site or at a center shop[s] of [Respondent] and maintenance of gob piles and mineroads, 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, watchmen, clerks, engineering and technical employees and all professional employees, guards, and supervisors as defined in the Act.

At all times material the Union has been recognized as the exclusive collective-bargaining representative of the Respondent's employees in the unit described above. Such recognition has been embodied in a collective-bargaining agreement which is effective by its terms for the period February 1, 1988, to February 1, 1993. The Union continues to be the exclusive representative under Section 9(a) of the Act.

Since on or about May 29, 1990, the Respondent has failed to provide the unit employees with the health insurance benefits set forth in the above collective-bargaining agreement. This action was taken without notice to, and without the consent of, the Union.

Accordingly, we find that the Respondent, as specified in the Conclusions of Law below, has refused to bargain in good faith with the representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By unilaterally departing from its contractual obligations with respect to health insurance benefits, the Respondent has refused to bargain in good faith in violation of Section 8(a)(1) and (5).

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the unilateral refusal to provide the contractually required health insurance benefits, we shall order the Respondent to restore those benefits and make its employees whole for any losses resulting from its failure to provide health insurance coverage since May 29, 1990, in the manner prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Interest on any money due and owing employees shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Rebb Energy, Inc., Logan, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally discontinuing the health insurance benefits established in the 1988–1993 collective-bargaining agreement with the Union as the exclusive representative of the employees in the following appropriate unit:

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing and cleaning of coal (except by waterway or rail not owned by [Respondent]), repair and maintenance work normally performed at the mine site or at a center shop[s] of [Respondent] and maintenance of gob piles and mineroads, 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, watchmen, clerks, engineering and technical employees and all professional employees, guards, and supervisors as defined in the Act.

(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) Restore and maintain in effect health insurance benefits for unit employees protecting them against medical and hospital costs in the same manner and to the extent they enjoyed such benefits prior to May 29, 1990.

(b) Make the unit employees whole for any loss of benefits suffered as a result of the Respondent's unilat-

eral discontinuation of health insurance coverage, in the manner set forth in the remedy section of this decision.

(c) 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 of payments to employees due under the terms of this Order.

(d) Post at its facility in Stirrat, West Virginia, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon 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 to ensure that the notices are not altered, defaced, or covered by any other material.

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

¹ 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."

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 unilaterally discontinue your health insurance benefits provided in the collective-bargaining agreement with United Mine Workers of America, District 17, Sub-District 3.

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

WE WILL restore and maintain in effect health insurance benefits for you protecting you against medical and hospital costs in the same manner and to the extent you enjoyed them prior to May 29, 1990.

WE WILL make you whole for any loss of health insurance benefits you may have suffered because of our failure to abide by the contract since on or about May 29, 1990, plus interest.

REBB ENERGY, INC.