

**International Union, United Mine Workers of America and Island Creek Coal Company [and various other Employers listed in Appendix B].** Cases 5–CC–1109–1 et al.; 6–CC–1770 et al.; 8–CC–1404 et al.; 9–CC–1368–1 et al.; 10–CC–1295 et al.; 11–CC–142 et al.; 14–CC–2051–1 et al.; 25–CC–677–1 et al.; and 26–CC–476 et al.

May 14, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT, DEVANEY, OVIATT, AND  
RAUDABAUGH

On June 29, 1990, International Union, United Mine Workers of America (Respondent International or the Respondent), various Charging Parties as reflected by signatures in attachment 1,<sup>1</sup> and the General Counsel of the National Labor Relations Board entered into a Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States court of appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

A number of Charging Parties have filed objections to the settlement on the grounds, inter alia, that it contains a nonadmission clause and does not include additional notice requirements. Several of the objecting Charging Parties have also objected to the settlement on the ground that the Respondent Union continued to engage in similar misconduct after it executed the settlement in April 1990.

After carefully reviewing these objections, we conclude, in agreement with the General Counsel, that they do not warrant disapproval of the settlement. First, contrary to our dissenting colleague, we do not agree that the inclusion of a nonadmission clause implies that we condone the Respondent's alleged illegal activity. It merely reflects that the settlement was the result of a compromise prior to a final adjudication on the merits finding the alleged violations. As the Second Circuit stated in upholding the Board's approval of a nonadmission formal settlement containing cease-and-desist and notice provisions substantially similar to those here:

<sup>1</sup> After the settlement was forwarded to the Board, Charging Party Freeman United Coal Mining Company requested leave to join in the settlement. The request is granted. In accordance with the General Counsel's recommendation, we also approve the requests made by Arch of Kentucky, Inc., Arch of West Virginia, Inc., Harmon Mining Corp., and Spring Ridge Coal Co. to withdraw their charges in Cases 9–CC–1407–1, 9–CC–1449, 9–CC–1422–1, 11–CC–147, and 6–CC–1809–1–2, and remand these cases to the Regional Director for further appropriate action.

[W]e are not dealing with a successfully litigated prosecution of unfair labor practices that has culminated in findings of a violation based upon evidence introduced at a hearing and subjected to cross-examination, but with a settlement. The order is based solely upon a stipulation, entered into as the basis of an order only with the respondent's consent. The stipulation, of course, reflects a considered compromise by both sides. It undoubtedly represents the most by way of relief that the Board believes that it could achieve short of full litigation. Should the Board insist upon the admission of guilt demanded by [the Charging Party Employer], the Union would in all probability refuse to settle, immediate injunctive relief would be scuttled, and the parties would be relegated to the delay and expense of pretrial preparation and hearings, with no assurance as to the content or scope of the ultimate findings or the relief that would be granted. [*Containair Systems Corp. v. NLRB*, 521 F.2d 1166, 1171–72 (2d Cir. 1975).]

To be sure, nonadmission clauses are not to be routinely incorporated into settlement agreements.<sup>2</sup> However, the Board has long recognized that under certain circumstances, agreement to inclusion of such a clause may be a relatively small price to pay in order to obtain an immediate order proscribing the alleged misconduct. Accordingly, the Board has consistently approved formal settlements containing such a clause where the settlement would effectuate the purposes of the Act. See, e.g., *Mine Workers (Decker Coal)*, 294 NLRB 162 (1989); *Philadelphia Building Trades Council (Wohlsen Construction)*, 279 NLRB 1242 (1986); *Mine Workers (James Bros. Coal)*, 191 NLRB 209 (1971).

We similarly disagree with our dissenting colleague that the stipulated order, when coupled with the nonadmission clause, fails to address the allegedly illegal activity, leaves the impression that any party engaging in such conduct will not be held accountable, and/or leaves the alleged conduct unremedied. The stipulated order is broad in its scope and nationwide in its geographic reach. In terms of proscribed means and in terms of proscribed objectives, it prohibits the Respondent from engaging in unlawful secondary conduct not only with respect to the named Employers, but also with respect to "any other person." By agreeing to the settlement, the Respondent has consented both to the entry of this order and to the entry of an appeals court judgment enforcing it—a judgment that will in turn be enforceable through contempt proceedings. Contrary to our dissenting colleague, we do not believe that these provisions merely "beg the question." They in fact

<sup>2</sup> See NLRB Casehandling Manual Sec. 10130.7.

bar the Respondent—by the most effective means available under the Act—from engaging in any future illegal secondary activity. And nothing in the non-admission clause in any way modifies the provisions or undermines their efficacy. See *Containair Systems*, supra at 1173.<sup>3</sup>

We also respectfully disagree with our dissenting colleague that the settlement's notice requirements are inadequate to signal to union members that the alleged illegal activity is prohibited by law and will not be tolerated. The settlement contains the traditional notice-posting remedy imposed by the Board, requiring the Respondent to post a copy of the notice at each of its business offices and those of 14 of its affiliated Districts, and to also provide copies of the notice for posting by the Charging Party Employers, if willing, in all places where notices to employees are customarily posted. While we cannot say with certainty that we would not have included additional notice requirements in a final order after full litigation, as indicated above in our discussion of the nonadmission clause, the issue here is not the appropriateness of a final Board order, but the appropriateness of a settlement.

Finally, with regard to the objection that the Respondent continued to engage in unlawful secondary conduct after it signed the settlement, we note that this objection has not been supported by any facts or evidence. We therefore find that this objection also does not warrant disapproval of the settlement.

As indicated above, the settlement in this case provides for the entry of a broad, nationwide cease-and-desist order against the Respondent enforceable through contempt proceedings. Further, this order will be entered immediately, without the costs and delay of litigation. In these circumstances, and taking into account the early stage of the litigation (prior to the hearing), the inherent risks and uncertainties of litigation generally, and the fact that the General Counsel has recommended approval of the settlement, we find that, on balance, it would effectuate the purposes and policies of the Act to approve the settlement.

Accordingly, the Settlement Stipulation is approved and made a part of the record and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Settlement Stipulation.

On the basis of the Settlement Stipulation and on the entire record, the Board makes the following

<sup>3</sup>While it is true that the General Counsel will have to show in any future contempt proceeding that the allegedly contumacious secondary conduct engaged in by the Respondent is actually unlawful and in violation of the order, this is always true in a contempt proceeding. The General Counsel's task would not necessarily be made any easier by the absence of a nonadmission clause. Even if the Respondent admitted that it engaged in unlawful conduct in the instant cases, that would not necessarily tend to establish that it engaged in contumacious conduct in some future case.

## FINDINGS OF FACT

### I. THE EMPLOYER'S BUSINESS

At all times material, Pittston Coal Group, Inc. (Pittston), a corporation has been engaged in the operations of coal lands, coal mines, and coal preparation plants, through various subsidiaries, at facilities located throughout the Commonwealth of Virginia, Commonwealth of Kentucky, and the State of West Virginia. During the past 12 months, Pittston purchased and received at its various locations within the Commonwealth of Virginia products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Virginia. The Respondent and various Charging Parties in attachment 1 [omitted from publication] admit, and we find, that Pittston is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that each of the Employers listed in appendix A [omitted from publication] is now, and has been at all times material, a person engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

International Union, United Mine Workers of America is a labor organization within the meaning of Section 2(5) of the Act.

## ORDER

On the basis of the above findings of fact, the Settlement Stipulation, and on the entire record, the National Labor Relations Board orders that the Respondent, International Union, United Mine Workers of America, its officers, representatives, employees and agents, shall

#### 1. Cease and desist from

(a) Engaging in or inducing or encouraging any individual employed by any of the Employers listed in appendix B, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threatening, coercing, or restraining any of the Employers listed in appendix B, or any other person engaged in commerce, or in an industry affecting commerce where, in either case, an object thereof is to force or require any of the Employers listed in appendix B, or any other person, to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force or require any of the Employers listed in appendix B, or any other person, to cease doing business with any

other person in violation of the National Labor Relations Act.

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

(a) Post in conspicuous places at each of its business offices and those of its affiliated Districts (2, 4, 5, 6, 11, 12, 14, 17, 19, 23, 28, 29, 30, and 31), including all places where notices to members are customarily posted, copies of the attached notice marked "Appendix C."<sup>4</sup> Copies of the notice, on forms provided by the respective Regional Directors for Regions 5, 6, 8, 9, 10, 11, 14, 25, and 26, after being duly signed by a representative of Respondent International, shall be posted immediately upon receipt and maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by Respondent International to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Directors for Regions 5, 6, 8, 9, 10, 11, 14, 25, and 26 signed copies of the notices for posting, if willing, by the Charging Parties, in all places where notices to employees are customarily posted. Copies of the notice, on forms provided by the Regional Directors for Regions 5, 6, 8, 9, 10, 11, 14, 25, and 26 shall, after having been signed by Respondent International's representative be forthwith returned to the Regional Directors for such posting by the Charging Parties.

(c) Notify the Regional Directors for Regions 5, 6, 8, 9, 10, 11, 14, 25, and 26 in writing within 20 days from the date of this Order what steps Respondent International has taken to comply.

MEMBER OVIATT, dissenting.

Recognizing the views of my fellow Board Members who approved the Settlement Stipulation here, I have reflected at some length on the Settlement Stipulation arrived at by the General Counsel and the Unions in this matter. I now conclude that I cannot approve the Settlement Stipulation as proposed and submitted.

If the secondary boycott activity occurred, as alleged in the complaints issued in these matters, I view such activity to be the ultimate form of illegal economic violence and harassment. Such activity can and does have a broad impact on an industry and the economic viability of employers in both the long and short term. This being so, it also affects the job security of uninvolved employees and their financial and job security, as well as the economic health of the community in which they reside. It can have a detrimental impact on uninvolved persons, businesses, communities, and regions where a major element of each is associated with

the industry involved in the primary dispute. Where the alleged illegal activities are pervasive and widespread, as here alleged, the economic impact could well be catastrophic for many uninvolved persons and entities.

After 57 years of history and experience under the National Labor Relations Act, it is well past time that all parties recognize that violence, harassment, and threats of any kind, including economic violence, must be removed as an element of the labor-management relationship. This Settlement Stipulation, in my view, will be interpreted to excuse such activity and is a disservice to the processes embodied in the Act for the peaceful resolution of labor disputes and to those parties struggling to resolve their differences within the law's framework. It is time that management and labor both understand that the management-labor relationship has moved beyond the type of activity alleged here.

Economic violence, harassment, and threats are not new to the unions and employers in the mining industry. The 1989–1990 strike and the alleged secondary boycott activity associated with that strike, if true, is yet another episode in a long history. To resolve the 8(b)(4) charges here with a Settlement Stipulation, which provides for the entry of a broad, nationwide order for contempt if the alleged illegal activity again occurs, begs the question. And, when coupled with the nonadmission clause included in the agreement, it fails to address the allegedly illegal activity and leaves the clear impression, particularly in the mining industry, that any party engaging in such activity will not be held accountable, but will only be advised, once again, not to repeat the violative acts. This leaves unremedied activity which, if proven, clearly violates the law.

Had the agreement not included a nonadmission provision, I would have approved it since that could not imply to those involved that we were condoning this alleged illegal activity. On the other hand, I would have approved the agreement as submitted if it had provided that the International and the other union officers read, in the presence of the Board's General Counsel, the provisions of the Board's Order and explain the consequences of future similar activity to all local and district union members. That could easily have been accomplished by the use of a video tape, which could have been played at a meeting of members of each local or district union. I then would have concluded that the message of this Settlement Stipulation—that future economic violence and threats will not be countenanced and will subject those involved to contempt prosecution—would be sufficiently conveyed to those allegedly involved. The message that this Board will enforce the National Labor Relations Act as it was intended to be enforced would then have been delivered personally and, in my view, adequately. The mere posting of a notice is not enough to signal to

<sup>4</sup>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."

union members that this allegedly pervasive and widespread illegal activity is prohibited by law and will not be tolerated.

However, since the Settlement Stipulation does not contain such remedial procedures, and does include a nonadmission clause, I cannot approve it and would send these issues to a hearing for determination whether such activity occurred and, if proven, would then provide a strong remedy consistent with our Act.

#### APPENDIX B

Island Creek Coal Company  
 Cyprus Emerald Resources Corporation  
 Gateway Coal Company  
 Tanoma Mining Company, Inc.  
 Iselin Coal Preparation Company  
 Florence Mining Company  
 Helvatia Coal Company  
 Keystone Coal Mining Corporation  
 Greenwich Collieries, a Division of Pennsylvania Mines Corporation  
 Rushton Mining Company, a Wholly Owned Subsidiary of Pennsylvania Mines Corporation  
 Tunnelton Mining Company  
 Shannopin Mining Company  
 The Helen Mining  
 Beth Energy Mines, Inc.  
 U.S. Steel Mining Company  
 Southern Ohio Coal Company  
 Penn Allegh Coal Company  
 Dillton Facilities, Division of Pennsylvania Mines Corporation  
 Windsor Coal Company  
 Pennsylvania Electric Company  
 Juliana Coal Company  
 Dietrich Industries, Inc.  
 Consolidation Coal Company  
 McElroy Coal Company  
 Northern Continental Operating Co.  
 North Fayette Coal Company  
 Spring Ridge Coal Company  
 Season-All Industries, Inc.  
 The Monongahela Railway Company  
 Oneida Coal Company, Inc.  
 West Penn Power Company  
 Bently Coal Co.  
 Meco International, Inc.  
 Aloe Coal Company  
 Four Diamonds Construction, Inc.  
 Eastern Associated Coal Corp.  
 Minotte Contracting Corporation  
 Monongahela Power Company  
 The Ohio Valley Coal Company  
 Quarto Mining Company  
 Central Ohio Coal Company  
 Saginaw Mining Company  
 Boich Mining Company

Peabody Coal Company  
 Hampden Coal Company, Inc.  
 Westmoreland Coal Company  
 Sharples Coal Corporation  
 Lowlands Coal Corporation  
 Old Hickory Coal Corporation  
 Swamp Fox Development  
 Central Continental Operating Company, Inc.  
 Omar Mining Company  
 Princess Beverly  
 Donaldson Mine Company  
 High Power Mountain Corporation  
 Rum Creek Coal Sales, Inc.  
 Appalachin Mining, Inc.  
 Hatfield Dock and Transfer, Inc.  
 Anchor Mining, Inc.  
 Agipcoal USA, Inc.  
 Virginia Crews Coal Company  
 Pikeville Coal Company  
 Hobet Mining, Inc.  
 Premium Energy, Inc.  
 W-P Coal Company  
 Arch of Kentucky, Inc.  
 Kentucky Carbon Corporation  
 M & H Coal Company  
 The Lady H Coal Company, Inc.  
 Cedar Coal Company  
 Elk Run Coal Company, Inc.  
 Superior Mining and Minerals, Inc.  
 Old Ben Coal Company  
 Sidney Coal Company, Inc.  
 New Era Coal Company  
 Arch of West Virginia, Inc.  
 Davidson Mining, Inc.  
 Tommy Creek Coal Company  
 Stoney Coal Company  
 East Gulf Fuel Corporation  
 Harley Mining, Inc.  
 Zalkin Coal Sales, Inc.  
 Birchfield Mining, Inc.  
 Maben Energy Corporation  
 M. A. E. West, Inc.  
 Hansford Smokeless Collieries  
 Bituminous Coal Operators Association, Inc.  
 Northland Resources, Inc.  
 Gauley Coal Sales Company  
 Maple Meadow Mining Company  
 Cannelton Industries, Inc.  
 Nix Mining Company  
 Pax Mining Company  
 High Power Energy  
 Kanawha Mining Company, Inc.  
 Cyprus Kanawha Corporation  
 Langley & Morgan Corporation  
 Sovereign Coal Corporation  
 Nueast Mining Corp.  
 Colony Bay Mining Company

Toney's Branch Coal Company  
 Eastern Associated Coal Corporation  
 Dunbar Plaza Inc. d/b/a Dunbar Travelodge  
 Eaglehawk Carbon, Inc.  
 Kanawha Valley Labor Council  
 Kesscoal, Inc., Capitol Fuels Dock  
 Kesscoal, Inc.  
 Rawl Sales and Processing Company, Inc.  
 Jim Walter Resources, Inc.  
 Drummond Company, Inc.  
 The Pittsburgh & Midway Coal Mining Company  
 Cardova Trucking Company, Inc.  
 A.J. Taft Coal Co., Inc.  
 IMAC Energy, Inc.  
 Black Warrior Minerals, Inc.  
 Black Gold Trucking Company  
 Electrical Design & Construction Co., Inc.  
 Gateway Malls, Inc.  
 Blue Square II, Inc.  
 Harman Mining Corporation  
 Delta Mining, Inc.  
 Arch of Illinois, Inc.  
 Freeman United Coal Mining Company  
 Monterey Coal Company  
 American Electric Power Corp.,  
 Ohio Power Cook Coal Terminal  
 Ziegler Coal Company  
 Amax Coal Company  
 Old Ben Coal Company  
 Green River Coal Co., Inc.

## APPENDIX C

NOTICE TO MEMBERS  
 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 engage in or induce or encourage any individual employed by any of the Employers listed in Appendix B, or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, or threaten, coerce, or restrain any of the Employers listed in Appendix B, or any other person engaged in commerce, or in an industry affecting commerce where, in either case, an object thereof is to force or require any of the Employers listed in Appendix B, or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to force or require any of the Employers listed in Appendix B, or any other person to cease doing business with any other person in violation of the National Labor Relations Act.

INTERNATIONAL UNION, UNITED MINE  
 WORKERS OF AMERICA