

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IN THE MATTER OF ARTHUR M. STANDISH,
U.S. TRUSTEE IN BANKRUPTCY
(Berachah Mining, Inc.)

and

Case 9-CA-26940

DISTRICT 17, UNITED MINE WORKERS
OF AMERICA

August 28, 1991
DECISION AND ORDER

By Members Diverney, Cviatt, and Raulabough
Upon a charge filed by the Union, District 17, United Mine Workers of

America, the General Counsel of the National Labor Relations Board issued a complaint on December 6, 1989, alleging that Berachah Mining, Inc., and Arthur M. Standish, its Trustee in Bankruptcy, collectively the Respondent, had violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On July 8, 1991, the General Counsel filed a Motion for Summary Judgment and a Memorandum in Support. On July 11, 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 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.

located outside the State of West Virginia.² 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, District 17, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

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 a central shop[s] 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, weight 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.

Since 1985, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees, and since that date has been recognized as said representative by the Respondent. The Respondent and the Union have entered into successive collective-bargaining agreements, the most recent of which was effective from about February 1, 1988, until January 31, 1991.

By virtue of Section 9(a) of the Act, the Union is and has been, at all material times, the exclusive representative of the unit employees for the

² Since about August 9, 1989, Arthur M. Standish has been duly designated by the U.S. Bankruptcy Court, Southern District of West Virginia, as the Trustee in Bankruptcy of the Respondent, Berachah Mining, Inc., with full authority to continue the Respondent's operations and to exercise all powers necessary to the administration of the Respondent's business.

purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

B. The Refusals to Bargain

Since about August 18, 1989, the Respondent has failed and refused to furnish the Union with requested information relating to the operations and closure of its coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

In addition, since about August 18, 1989, the Respondent has failed and refused to bargain over the effects on unit employees of its decision to close its coal preparation plant.

We find that by the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to furnish the Union with requested information relating to the operations and closure of its coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees and by failing and refusing to bargain over the effects on unit employees of its decision to close its coal preparation plant, 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 actions designed to effectuate the policies of the Act.

We shall order the Respondent to furnish the Union with requested information relating to the operations and closure of its coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees. Further, we shall order the Respondent to bargain on request with the Union concerning the effects on unit employees of its decision to close its coal preparation plant.

We shall accompany the order with a limited backpay requirement designed both to make the employees whole for the losses suffered as a result of the Respondent's failure to bargain, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by requiring the Respondent to pay backpay to unit employees in a manner similar to that required in Transmarine Navigation Corp., 170 NLRB 389 (1968). The Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the decision to cease doing business on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain

in good faith. In no event shall the sum paid to any of these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than the amount these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

Finally, in view of the Respondent's closure of its facility, we shall order the Respondent to mail copies of the notice to all unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, Berachah Mining, Inc., and Arthur M. Standish, Trustee in Bankruptcy, Logan, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish the Union with requested information relating to the operations and closure of its coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

(b) Failing and refusing to bargain over the effects on unit employees of its decision to close the coal preparation plant.

(c) 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) Furnish the Union with requested information relating to the operations and closure of its coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

(b) On request, bargain collectively with the Union about the effects on unit employees of its decision to close its coal preparation plant and, if an agreement is reached, embody the understanding in a signed agreement.

(c) Pay the unit employees laid off or discharged on the date the Respondent closed the coal preparation plant their normal wages, plus interest, for the period set forth in the remedy section of this decision.

(d) 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 backpay due under the terms of this Order.

(e) Mail a copy of the attached notice marked "'Appendix'"³ to the Union and to the last known addresses of all unit employees who were employed at its Logan, West Virginia facility immediately prior to the Respondent's closure of that facility or at the time of the Respondent's unfair labor practices. 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 mailed immediately upon receipt.

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.'"

(f) 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. August 28, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, 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 and refuse to furnish the Union, District 17, United Mine Workers of America, with requested information relating to the operations and closure of our coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT fail and refuse to bargain over the effects on unit employees of our decision to close the coal preparation plant.

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 furnish the Union with requested information relating to the operations and closure of our coal preparation plant that is relevant and necessary for the Union's performance of its functions as the exclusive collective-bargaining representative of the unit employees.

WE WILL, on request, bargain collectively with the Union about the effects on unit employees of the closure of our coal preparation plant and, if an agreement is reached, embody the understanding in a signed agreement.

WE WILL pay the unit employees laid off or discharged on the date we closed the coal preparation plant their normal wages, plus interest, for the period required by the Decision and Order of the National Labor Relations Board.

BERACHAH MINING, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

ARTHUR M. STANDISH,

(U.S. Trustee in
Bankruptcy)

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, 550 Main Street, Room 3003, Cincinnati, Ohio 45202-3271, Telephone 513--684--3663.