

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REBB ENERGY, INC.

and

Case: 9--CA--28409

DISTRICT 17, UNITED MINE
WORKERS OF AMERICA

August 27, 1991

DECISION AND ORDER

By Chairman Stephens and Members Cavanaugh and Raudabaugh
Upon a charge filed by the Union March 27, 1991, and an amended charge

filed on May 6, 1991, the General Counsel of the National Labor Relations Board issued a complaint May 7, 1991, against Rebb Energy, Inc., the Respondent, alleging that it has violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent has failed to file an answer.

On July 3, 1991, the General Counsel filed a Motion for Summary Judgment. On July 8, 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.

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 of the allegations in the complaint shall be deemed to be admitted to be true and shall 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 June 20, 1991, notified the Respondent that unless an answer was received by June 28, 1991, 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 corporation with its principal office in Logan, West Virginia, has been engaged in mining coal in the vicinity of Cabin Creek, West Virginia. During the past 12 months, the Respondent, in the course and conduct of its business operations sold and shipped from its Cabin Creek, West Virginia facility products, goods, and materials valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(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

Since June 29, 1990, and at all times material, the Union has been designated the exclusive collective-bargaining representative of the employees in the unit,¹ and since that date has been recognized as such by the Respondent. That recognition has been embodied in a collective-bargaining agreement between the Respondent and the International Union, United Mine Workers of America, on behalf of its various districts, including the Union, which is effective by its terms for the period February 1, 1988, to February 1, 1993. 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 purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about December 14, 1990, the Union, by letter, has requested the Respondent to furnish it with a copy of any lease or sublease, contract, or any other agreement for the mining of coal in the Cabin Creek, West Virginia area, entered into by the Respondent. In addition, since on or about January 17, 1991, the Union, by letter, has requested that the Respondent furnish it with a complete copy of any insurance plan that the Respondent has

¹ The following employees of the Respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

All employees of [the 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 [the Respondent]), repair and maintenance work normally performed at the mine site or a center shop[s] of [the 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 [the 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.

maintained for the employees in the unit. This information, requested by the Union, is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit. Since on or about December 14, 1990, and January 17, 1991, respectively, the Respondent has failed and refused to furnish the Union with the requested information.

Since on or about September 27, 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to provide the employees in the unit with the health insurance benefits set forth in the agreement. In addition, since on or about November 1, 1990, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement, by failing to remit dues and assessments to the Union pursuant to dues-checkoff authorizations executed by the employees in the unit. Finally, since on or about February 8, 1991, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to provide the employees in the unit with the wages and accrued benefits set forth in the agreement.

Accordingly, we find that the Respondent has refused to furnish the requested information and to apply and abide by the terms of the collective-bargaining agreement, in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing to furnish the Union, on request, with information necessary for and relevant to the Union's function as the exclusive collective-bargaining representative, and by failing to continue in full force and effect the terms and conditions of the collective-bargaining agreement with the Union by failing to provide employees in the unit with the health insurance

benefits, and the wages and accrued benefits set forth in the agreement and by failing to remit the dues and assessments to the Union pursuant to dues-checkoff authorizations executed by the employees in the unit, the Respondent has failed and refused, and is failing and refusing to bargain collectively and in good faith with the representative of its employees as required by Section 8(d) of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

Remedy

Having found 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 provide the Union, on request, with information necessary for and relevant to the Union's function as the exclusive collective-bargaining representative of the employees in the unit. We shall also order the Respondent to adhere to the terms of the collective-bargaining agreement with the Union by providing the employees in the unit with the health insurance benefits and the wages and accrued benefits set forth in that agreement, and by remitting dues and assessments to the Union pursuant to the dues-checkoff authorizations executed by the employees in the unit. We shall also order the Respondent to make whole its unit employees, with interest, for any expenses or losses they may have suffered as a result of its failure to provide the contractually required health insurance benefits, in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and for any loss of wages and accrued benefits they may have suffered as a result of its failure to provide the contractually required wages and benefits, such losses in all instances to be computed in

the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). We shall also order the Respondent to remit to the Union, with interest, all authorized back dues and assessments owing the Union. Interest on all such losses and remitted dues and assessments shall be computed in the manner set forth 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) Failing to furnish the Union, on request, information necessary for and relevant to its function as the exclusive collective-bargaining representative of the employees in the unit.

(b) Failing to continue in full force and effect the terms and conditions of its collective-bargaining agreement with the Union by failing to provide the employees in the unit with the health insurance benefits, and the wages and accrued benefits set forth in that agreement, and by failing to remit dues and assessments to the Union pursuant to dues-checkoff authorizations executed by the employees in the unit. The appropriate unit is:

All employees of [the 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 [the Respondent]), repair and maintenance work normally performed at the mine site or a center shop[s] of [the 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 [the 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.

(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) On request furnish the Union with all information, necessary for and relevant to the Union's function as the exclusive collective-bargaining representative of the employees in the unit, including specifically copies of any lease or sublease, contract, or any other agreement for the mining of coal in the Cabin Creek, West Virginia area, entered into by the Respondent, and complete copies of any insurance plan that the Respondent maintained for the employees in the unit.

(b) Adhere to the terms and conditions of the collective-bargaining agreement with the Union by providing the employees in the unit with the health insurance benefits and the wages and accrued benefits set forth in that agreement, and by remitting dues and assessments to the Union pursuant to dues-checkoff authorizations executed by the employees in the unit.

(c) Make whole the unit employees for any loss of health insurance benefits and wages and accrued benefits they may have suffered as a result of the Respondent's failure and refusal to adhere to the terms and conditions of the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(d) Remit to the Union all authorized dues and assessments, as set forth in the remedy section of this decision.

(e) 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.

(f) Post at its facilities in Logan, West Virginia, and Cabin Creek, West Virginia, copies of the attached notice marked "'Appendix.'"² 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 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.

(g) 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 27, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

² 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 fail to furnish the Union, on request, information necessary for and relevant to its function as the exclusive collective-bargaining representative of the employees in the unit.

WE WILL NOT fail to continue in full force and effect the terms of the collective-bargaining agreement with the Union by failing to provide the health insurance benefits, and the wages and accrued benefits set forth in the agreement, and by failing to remit to the Union dues and assessments pursuant to dues-checkoff authorizations executed by the unit employees. The appropriate unit is:

All employees of [the 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 [the Respondent]), repair and maintenance work normally performed at the mine site or a center shop[s] of [the 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 [the 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.

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

WE WILL on request furnish the Union with all information necessary for and relevant to its function as the exclusive collective-bargaining representative of the unit employees, including specifically copies of any lease or sublease, contract, or any other agreement for the mining of coal in the Cabin Creek, West Virginia area, entered into by us, and complete copies of any insurance plan that we maintain for our employees in the unit.

WE WILL adhere to the terms and conditions of the collective-bargaining agreement with the Union by providing the employees with the health insurance benefits, and wages and accrued benefits set forth in the agreement, and by remitting dues and assessments to the Union pursuant to the dues-checkoff authorizations executed by the unit employees.

WE WILL make whole the unit employees for any loss of health insurance benefits and wages and accrued benefits they may have suffered as a result of our failure and refusal to adhere to the terms and conditions of the collective-bargaining agreement with the Union, with interest.

WE WILL remit to the Union, with interest, all authorized back dues and assessments owing the Union.

REBB ENERGY, INC.

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