

Shenandoah Coal Company and United Mine Workers of America and District 28, United Mine Workers of America. Case 11-CA-13282

January 8, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On August 20, 1991, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions,² and to adopt the recommended Order.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 2.

"2. By unlawfully rendering assistance to SVCMU by soliciting employees in December 1988 to sign SVCMU dues-checkoff cards and by soliciting employees in January 1989 to join SVCMU and sign SVCMU dues-checkoff cards, the Respondent violated Section 8(a)(2) and (1) of the Act."

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Shenandoah Coal Company, Oakwood, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We note that in sec. II, D, par. 1, the judge inadvertently stated that the Respondent discharged Ray on January 8, 1989, rather than on January 9.

² We have amended the judge's Conclusions of Law to conform to the violations found.

Patricia L. Timmins, Esq., for the General Counsel.
Mark M. Lawson and Mark R. Graham, Esqs. (White, Elliott & Bundy), of Bristol, Virginia, for the Respondent.
James J. Vergara Jr., Esq., of Hopewell, Virginia, for the Union.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried in Tazewell, Virginia, on January 15-16, 1991. The charge was filed by United Mine Workers of America and its District 28 (the Union) against Shenandoah Coal Company on April 18, 1989 (amended May 3 and June 28, 1989, and March 29, 1990). The complaint was issued March 30, 1990.

The Company's underground mine, leased from Pittston, was previously operated as a union mine. About May or June 1988 the Company resumed the production of coal at the mine. About 2 months earlier, when only four employees were there pumping water in preparation for production, the Company assisted in forming, and signed a 5-year agreement with, an organization called Southwest Virginia Coal Miners Union (SVCMU).

On January 3, 1989,¹ the Union sent the Company a written request for negotiations. The following week the Company informed union supporter Peck Ray it was "time for you to leave" and permanently laid off union supporters Glen Cook, Joe Horne, and Rockie and Todd Meadows, disregarding the contractual seniority in the SVCMU agreement.

The primary issues are whether the Company, the Respondent, (a) rendered unlawful assistance to SVCMU during the 10(b) 6-month limitation period (after October 18, 1988), (b) engaged in coercive interrogation and other coercive conduct, (c) threatened to close the mine and move to another site to avoid the Union, and (d) discriminatorily discharged employee Ray and laid off employees Cook, Joe Horne, and Rockie and Todd Meadows, violating of Section 8(a)(1), (2), and (3) of the National Labor Relations Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, mines coal in Buchanan County, Virginia, where it annually ships coal valued over \$50,000 to Jewel Ridge Mining Corp., which annually ships coal valued over \$50,000 directly outside the State. The Company admits, and I find, that it 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

A. Seniority Provisions in SVCMU Agreement

The Company, under the management of President James Ashby and Owner Rick Jackson, leased from Pittston a mine site that previously was a union operation (Tr. 10, 27, 109, 114, 281-282).

In March 1988 the Company hired Joe Horne, Todd Meadows, Rick Jackson's nephew Ronnie Blankenship, and

¹ All dates are from November 1988 to January 1989 unless otherwise stated.

a fourth employee to pump water from the mine to prepare it for resuming the production of coal around May or June 1988 (Tr. 8–9, 27, 134–135). Before hiring any other employees the Company assisted Blankenship in forming an organization called Southwest Virginia Coal Miners Union (SVCMU). It provided Blankenship the services of its attorney Bill Clay and its labor relations consultant Orville Sykes to form SVCMU and to draft a 5-year agreement. On April 27, 1988, Blankenship, Joe Horne, and Todd Meadows signed the agreement as SVCMU's officers. (Tr. 11–13, 38–42, 46, 51, 62, 135–148, 159–168, 175–177, 182–185, 192, 195–196; G.C. Exh. 2.)

As prepared by Sykes, the agreement established the company policy of following seniority and qualifications when laying off employees. Article XIV, Seniority, of the agreement (G.C. Exh. 2, p. 18) read:

SECTION 1. Seniority shall mean continuous length of service, at the mine site, calculated from the last date of employment.

SECTION 2. When a reduction in force is made at the mine site, the employee with the most seniority and qualifications will be retained.

The wage scale in the 5-year agreement that company consultant Sykes drafted provided wages from \$55 to \$75 a day for 8 hours work. To induce Blankenship, Horne, and Meadows to sign the agreement, President Ashby orally promised to continue paying them the \$85 a day they were being paid. (Tr. 10–13, 43, 138–142, 186; G.C. Exh. 2, appen. A, p. 27.)

SVCMU has never held a meeting or an election. No employees has ever paid any dues. Copies of the agreement have never been distributed to the employees. (Tr. 13–14, 36–37, 39–40, 58–59, 75–76, 103, 170–174, 190–191, 199–200.)

B. Assistance to SVCMU and Coercive Conduct

In November Ronnie Blankenship, Joe Horne, and Todd Meadows (all of whom had signed the SVCMU agreement as officers of that organization), Peck Ray (who is alleged to have been discharged on January 9), Glen Cook and Rockie Meadows (who were laid off with Joe Horne and Todd Meadows on January 11), and other employees of the Company visited the union hall in Oakwood, Virginia, and signed cards authorizing the Union to represent them. (Tr. 19, 74–75, 114–115, 211.)

On December 11 (the second Sunday in December) Peck Ray, four employees laid off January 11 (Glen Cook, Joe Horne, and Rockie and Todd Meadows), and other company employees attended UMW Local 1852's regular monthly meeting held at a trailer parked at another mine site. Additional company employees signed union authorization cards at that meeting and later at the union hall in Oakwood. (Tr. 20, 75, 95–97, 114–115, 211.)

On December 16, the following Friday, in the presence of members of the day shift, Owner Rick Jackson handed Peck Ray a SVCMU dues-checkoff card. Ray handed it back. As Peck Ray credibly testified, Jackson asked "wasn't I going to sign it." Ray answered no and walked off. Ray had never heard of SVCMU before. (Tr. 97–99.)

About that same date in December, Jackson approach third-shift electrician John Johnson and asked him to sign a

SVCMU checkoff card. Johnson had never heard about SVCMU and would not agreed to sign the card. (Tr. 123–124.)

In a meeting of second-shift employees, Jackson gave Clark Horne a SVCMU dues-checkoff card. The card (G.C. Exh. 3) was already filled out with his name, social security number, and name of employer, but the amount of dues was left blank. (No dues had ever been paid.) As Clark Horne credibly testified (Tr. 76–78), Jackson said he wanted Horne to sign it and

I told him I didn't want to sign it. He wanted to know why? I told him I'd never heard of it before, I didn't belong to that union.

He said that we'd belonged to it ever since I'd been working there and I told him that I'd never heard of it before.

The following Monday morning, December 19, President Ashby called Peck Ray into his office. In the presence of Owner Jackson and Superintendent Gordon Russ, Ashby wanted "to know the reason why I wouldn't sign the card." Ray answered that he had been with the Union since 1974 and he was not going to jeopardize his retirement for that place. (Tr. 97, 99.)

In the same conversation, Ashby said they had heard the rumors that the men had been at the union hall. Ray admitted that he and also other company employees had been there. Ashby stated and repeated that they were going to work (if the Union struck) and said that they would do so "even if he had to call the police in." Ray responded that he could not talk for the other men, "but myself, when the picketers come I was going to the house." (Tr. 100.) Without explanation, Ashby, Jackson, and Russ were not called to testify.

Later, with Jackson and Russ again present, Ashby talked to Clark Horne about signing the SVCMU card. As Horne credibly testified (Tr. 78–79):

James [Ashby] asked me if I had any particular reason why I would not sign it. And I told him that I did not belong to that union. He asked me if I belonged to any other union. I told him that I'd belong to the UMW and he wanted to know that if in case they had a strike or anything, that Pittston [employees] picketed them, would I cause him any trouble. I told him, no, I would not cause any trouble but I would not cross the picket line. He said that that was pretty much the same thing that Peck [Ray] had told him earlier.

I note that on January 2 (7 days before Ray's termination and 9 days before Glen Cook, Joe Horne, and Rockie and Todd Meadows were laid off) Clark Horne was injured on the job and was no longer working (Tr. 74).

During the first week of January, in the presence of Glen Cook and Todd Meadows outside the mine office, Owner Jackson handed Joe Horne one of the SVCMU checkoff cards and asked him to sign it. He refused. Cook and Meadows also refused to sign the cards that Jackson handed them. (Tr. 15–17.)

I find, as alleged, that Owner Rick Jackson unlawfully rendered assistance to SVCMU by soliciting Clark Horne, John Johnson, and Peck Ray in December and Glen Cook, Joe

Horne, and Todd Meadows in January to sign SVCMU checkoff cards, violating Section 8(a)(2) and (1) of the Act. *A.M.A. Leasing*, 283 NLRB 1017, 1022 (1987).

I also find that President Ashby's reference to employees being at the union hall created the impression that the Company was engaged in surveillance of union activities, coercing employees in violation of Section 8(a)(1), and that in the context of this and the unlawful solicitation of signatures on SVCMU dues-checkoff cards, Ashby's interrogation of Peck Ray and Clark Horne about their union support was coercive and further violated Section 8(a)(1).

C. Further Coercion and Threats

On Tuesday, January 3, after "just about" all the Company's mining employees had signed union authorization cards, the Union sent the Company a letter requesting negotiations. The Company did not respond to the letter. (Tr. 115-116; G.C. Exh. 4.)

It is undisputed that Raymond Jackson (Owner Rick Jackson's brother) observed Peck Ray, as well as Glen Cook, Joe Horne, and Todd Meadows, in open view at the trailer for the Local 1852 meeting on January 8 (Tr. 17-18, 20-22, 59-61). The next morning, as discussed later, Rick Jackson called Ray to his office and told him it was time for him to leave the mine. Jackson then talked to Cook, Joe Horne, Todd Meadows, and other employees on the first shift. This was the first Monday after the Union sent the Company its January 3 request for negotiations and 2 days before the Company permanently laid off Cook, Joe Horne, and Todd and Rockie Meadows. (Tr. 22-23, 115; G.C. Exh. 4.)

In the meeting with the day crew, Jackson "Said he was going to try to get insurance just as soon as he got to running a little more coal" (Tr. 229, 267). Until then, the Company had not provided the "major medical health plan" required in article XIX, Insurance, in the SVCMU agreement (G.C. Exh. 2, p. 23). Also in this meeting, as Joe Horne credibly testified (Tr. 23), Jackson said that

he heard that some of us had joined the Union, that he was not going to mine UMWA. He said, before he did that he would quit. The ones that had joined the Union, that would not sign the authorization to [checkoff dues for] Southwest Virginia Coal Miners Union, that wherever he went that the men that did sign to [check off the SVCMU dues] would go with him [but that those who would not sign] he would no longer have a job for them.

Although Rick Jackson was present at the trial, sitting at the counsel table assisting the company counsel, he did not testify (Tr. 10).

I find, as alleged, that in the January 9 meeting with Glen Cook, Joe Horne, Todd Meadows, and other members of the day crew, Owner Jackson (a) created the impression that the Company was engaged in surveillance of union activities, (b) threatened to close the mine if the employees joined the Union, (c) threatened to move to another site to avoid the Union, and (d) unlawfully rendered assistance to SVCMU by implicitly soliciting the employees to join SVCMU and to sign its dues-checkoff cards, further violating Section 8(a)(1).

D. Discharge of Peck Ray

Early Monday morning before work on January 8, Owner Rick Jackson called shuttle car operator Peck Ray into the office. There, in the presence of Superintendent Gordon Russ and Foreman Keith Horne, Jackson discharged Ray, telling him "I think it's time for you to leave." As Ray credibly testified (Tr. 101-102), the following transpired:

I asked him what the problem was. [Jackson] said, well, you said you wasn't going to give me no trouble.

I said, well, I'm not giving you no trouble. . . . what's going on here?

He said, well, I think it's time for you to leave.

I said, well, are you firing me?

He said, no. . . . I just think it's time for you to leave. You said you weren't going to give me no trouble. . . . he asked me where I was at the day before that. And I told him it weren't none of his damn business, that was Sunday. But I was at the union meeting and I'd be at the next one.

Then he asked me to leave again.

Then I told him . . . well, you need to talk to these men here. Negotiate with them or something.

He asked me if they's all out there and I told him, no. So, I walked out in the shop. When they all got there I hollered at him and told him they was there.

As found, Ray had signed an authorization card for the Union in November, had refused to sign a SVCMU dues-checkoff card upon Jackson's request on December 16, had informed Jackson and President Ashby on December 19 that he would not cross a union picket line, and then on Sunday, January 8, had attended a union meeting in open view of Jackson's brother Raymond.

The Company neither disputes Ray's testimony that Jackson told him, before working time that morning, that it was time for him to leave the mine, nor attempts to offer any explanation or justification. Neither Jackson nor Russ testified. Keith Horne did testify about what happened after the meeting, but did not dispute Ray's testimony about what transpired during the meeting.

Although Jackson at one point in the meeting denied that he was firing Ray, I find the undisputed testimony clear that he was discharging Ray by insisting on his leaving his employment at the mine. The evidence indicates that Jackson took this action because of the so-called trouble Ray was giving the Company: (a) refusing Jackson's request that he support SVCMU, (b) declaring his determination not to cross a union picket line, and (c) continuing his open support of the Union by attending the union meeting the day before. Moreover, immediately following the meeting with Ray, Jackson revealed the Company's unlawful motivation by threatening the day-shift employees with the loss of jobs if they refused to support SVCMU and selected the Union to represent them.

I therefore find that the General Counsel had made a prima facie showing sufficient to support the inference that Ray's support of the Union was a motivating factor in the Company's decision to discharge Ray. *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

The Company's defense is that Ray was not discharged and that he "resigned voluntarily from employment" (G.C. Exh. 1AA). Regarding what Ray said when he left Jackson's meeting with the day crew, Foreman testified: "I can't remember if he said 'I quit' or 'I'll just give it to you'" (Tr. 268), or that "He could have" said "I'm out of here" (Tr. 281). Electrician Ernest Hale recalled (Tr. 222) that "We was having a talk there and [Ray] just pulled his belt off and jerked his light off and said, 'I quit.'" Ray recalled (Tr. 102) that "when I hollered at [Jackson] he come out there and started to talking to them and I just left."

I agree with the General Counsel's contention in his brief (at 18) that "even assuming that Ray subsequently stated that he 'quit,'" the Company "itself had already discharged" him.

I reject the Company's contention that Peck Ray "resigned voluntarily from employment" at the mine and find that the Company discriminatorily discharged him on January 9, violating Section 8(a)(3) and (1). I further find, as alleged, that in the meeting with Ray that morning, Owner Jackson coercively interrogated the employee, violating Section 8(a)(1).

E. Four Union Supporters Laid Off

1. The permanent layoffs

On January 11, after a motor went down on one of the two continuous mining machines that the Company was operating, the Company disregarded its own seniority policy for layoffs and laid off senior employees from the first (day) shift, but none of the junior employees on the second shift (Tr. 24–25, 35, 94, 105, 261, 269, 273–280, 287; G.C. Exh. 2, p. 18).

The trouble-plagued Lee-Norse 265 mining machine and the superior Joy mining machine were used on both the first and second shifts. On both shifts the two mining machines were being used in separate sections of the mine, with separate crews except for the beltman who worked on the conveyor belt for both sections. After removing the Lee-Norse miner, the Company continued operating the Joy miner on both shifts. (Tr. 49–50, 125–126, 157–158, 210, 212–213, 217–218, 247, 263.)

No witness was called at the trial to explain why, after months of continual problems with the Lee-Norse miner, the Company decided at that time to discontinue using it instead of replacing the faulty motor, as before (Tr. 217). Owner Jackson had never indicated any intention of shutting down the Lee-Norse section (Tr. 270–271). Two days earlier, in a meeting with the day crew (as discussed above), Jackson had talked about getting insurance for the employees "as soon as he got to running a little more coal." Removing the Lee-Norse miner would result in far less production. Significantly, the decision to stop using the Lee-Norse miner was made 8 days after the Union requested negotiations and 2 days after the Company terminated Peck Ray and threatened day-shift employees with the loss of jobs if they selected the Union.

Furthermore, no witness was called to explain how it selected employees to lay off. Owner Rick Jackson and Superintendent Gordon Russ, who made the selection without consulting day-shift Foreman Keith Horne, did not testify (Tr. 287).

On January 11 the Company permanently laid off union supporters Glen Cook, Joe Horne, and Horne's two half-brothers, Rockie and Todd Meadows (Tr. 25–26, 44, 41–52, 105, 177–178). As found, all four of them had signed union authorization cards and attended the December 11 union meeting. One week earlier Cook, Joe Horne, and Todd Meadows had refused Jackson's requests that they sign SVCMU dues-checkoff cards, and 3 days earlier they had attended the union meeting in open view of Rick Jackson's brother Raymond.

I note that the Company also laid off Rick Jackson's nephew Ronnie Blankenship (who was off January 11–13, but was recalled Monday, January 16) and employee Raymond Vanover, neither of whom is alleged to have been discriminatorily laid off (Tr. 177–178, 204–206).

Joe Horne, the most senior employee, had been employed as a mining machine operator (a top-rated job) on both the Lee-Norse and Joy miners. He was laid off instead of junior miner operators on the second shift. (Tr. 8, 27–28, 248, 265; G.C. Exh. 2, p. 27.)

Senior shuttle car operators Glen Cook (hired in May 1988) and Todd Meadows (hired in March 1988) were laid off instead of junior shuttle car operators on the second shift. Todd Meadows was working on the Joy miner section, which continued in operation. His brother Rockie Meadows, who was the day-shift beltman working on the conveyor belt for the Lee-Norse and Joy sections, was laid off permanently even though the conveyor belt remained in operation on the day shift for the Joy section after the removal of the Lee-Norse miner. Thus, Rockie and Todd Meadows' jobs were not eliminated. (Tr. 37, 94, 105, 247, 261, 264–266, 274.)

In the absence of either Owner Jackson or Superintendent Russ as a witness, no nondiscriminatory reason was given at the trial for permanently laying off senior employees Glen Cook, Joe Horne, and Todd Meadows or for permanently laying off Rockie Meadows, the half-brother of Joe Horne and the brother of Todd Meadows, all of whom were open union supporters.

2. Contentions and concluding findings

The General Counsel contends in his brief (at 19) that without an explanation for the Company's decision "to get rid of the Lee-Norse miner at that time, one can only conclude that it was for the sole purpose of covering up the real purpose of its actions, the elimination of known union activists and its employees' support" of the Union. The General Counsel points out the problems experienced with the Lee-Norse "for as long as the miner had been in the mine," yet the Company took no action to discontinue using it "until after [the Company] received the demand for recognition" from the Union in early January.

Moreover, the General Counsel argues, even if the removal of the Lee-Norse miner "was justified and not a guise to conceal [the Company's] true motivation of stifling the [union] activities of its employees," the Company "never explained why it chose many of its most senior and most experienced employees for layoff," referring to Glen Cook, Joe Horne, and Todd Meadows. He also points out that Todd Meadows' work as shuttle car operator in the Joy section remained, and Rockie Meadows' work as a beltman on the conveyor belt also remained.

The Company, ignoring its failure to call Rick Jackson to testify, contends in its brief (at 6) that “When the Lee-Norse miner broke down for the last time, [Company Owner] Rick Jackson made the decision to shut down the Lee-Norse section” and some of the “employees had to lose their jobs.” It ignores the violations of its own seniority policy, argues that the evidence shows that more employees joined the Union than were laid off, and contends (at 7) that it “had legitimate business reasons for shutting down the Lee-Norse section of the mine and laying off some of its work force.” It argues that the “General Counsel failed to prove a prima facie case, but even if she did, the Employer produced sufficient evidence to prevail.”

I find that the General Counsel has made a prima facie showing sufficient to support the inference that their union support was a motivating factor in the Company’s decision to permanently lay off employees Glen Cook, Joe Horne, and Rockie and Todd Meadows. In making this finding I rely particularly on the following:

(a) The timing of the permanent layoffs, 8 days after the Union requested negotiations and 2 days after Owner Jackson discriminatorily discharged union supporter Beck Ray and threatened the first-shift employees with the loss of jobs if they refused to support SVCMU and selected the Union to represent them.

(b) The refusals by Glen Cook, Joe Horne, and Todd Meadows of Jackson’s requests the week before that they sign SVCMU dues-checkoff cards.

(c) The four employees’ open support of the Union.

(d) The permanent layoff of three of them, although senior employees, in violation of the Company’s own seniority policy for layoffs.

(e) The unexplained layoff of two of them, whose jobs were not eliminated.

I find that the Company has failed to sustain its burden to demonstrate that in the absence of the employees’ union support it would have discontinued using the Lee-Norse miner, or that even if it removed the Lee-Norse miner for legitimate reasons, that it would have permanently laid off any one of the four employees.

I therefore find that the Company discriminatorily laid off Glen Cook, Joe Horne, Rockie Meadows, and Todd Meadows in violation of Section 8(a)(3) and (1).

CONCLUSIONS OF LAW

1. By discriminatorily discharging Peck Ray on January 9 and permanently laying off Glen Cook, Joe Horne, Rockie Meadows, and Todd Meadows on January 11, 1989 for supporting the Union, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By unlawfully rendering assistance to SVCMU by soliciting employees in December 1988 to sign SVCMU dues-checkoff cards and by soliciting employees in January 1989 to join SVCMU and sign SVCMU dues-checkoff cards, the Company violated Section 8(a)(1).

3. By coercively interrogating employees, creating the impression that the Company was engaged in surveillance of their union activities, and threatening to close the mine and move to another site to avoid the Union, the Company further violated Section 8(a)(1).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged one employee and permanently laid off four employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge or layoff to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Having rendered unlawful assistance to SVCMU, the Respondent must cease recognizing and bargaining with it.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, Shenandoah Coal Company, Oakwood, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, laying off, or otherwise discriminating against any employee for supporting United Mine Workers of America (UMWA) or any other union.

(b) Rendering unlawful assistance to Southern Virginia Coal Miners Union by soliciting employees to join SVCMU or to sign its dues-checkoff cards.

(c) Coercively interrogating any employee about UNWA support or UMW activities.

(d) Creating the impression that it is engaged in surveillance of employees’ UMW activities.

(e) Threatening to close the mine and move to another site to avoid UMW.

(f) 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) Offer Glen Cook, Joe Horne, Rockie Meadows, Todd Meadows, and Peck Ray immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Remove from its files any reference to the unlawful discharge and layoffs and notify the employees in writing that this has been done and that the discharge or layoff will not be used against them in any way.

(c) Cease recognizing and bargaining with SVCMU.

(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

²If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its mine in Buchanan County, 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 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.

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

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

³If 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 discharge, lay off, or otherwise discriminate against any of you for supporting United Mine Workers of America (UMWA) or any other union.

WE WILL NOT unlawfully assist Southern Virginia Coal Miners Union by asking you to join SVCMU or to sign its dues-checkoff cards.

WE WILL NOT coercively question you about your UMWA support or activities.

WE WILL NOT create impression of surveillance of your UMWA activities.

WE WILL NOT threaten to close the mine or move to another site to avoid UMWA.

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 offer Glen Cook, Joe Horne, Rockie Meadows, Todd Meadows, and Peck Ray immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge or layoff, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to his discharge or layoff and that the discharge or layoff will not be used against him in any way.

WE WILL cease recognizing and bargaining with SVCMU as your representative.

SHENANDOAH COAL COMPANY