

**Long Branch 12 Trucking, Inc. and United Mine Workers of America, Local 9735. Case 9-CA-28855-1**

January 13, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
OVIATT AND RAUDABAUGH

Upon a charge filed by the United Mine Workers of America, Local 9735 (the Union) on August 22, 1991,<sup>1</sup> and an amended charge filed September 30, the General Counsel of the National Labor Relations Board issued a complaint against Long Branch 12 Trucking, Inc., the Respondent, alleging that it has 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 November 7, the General Counsel filed a Motion for Summary Judgment. On November 8, 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 General Counsel, by letter dated October 25, notified the Respondent of its obligation to file an answer and advised the Respondent that unless an answer was filed by November 1, 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

<sup>1</sup> Except where otherwise specified, all dates are in 1991.

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation, has been engaged in the transportation of coal within the State of West Virginia from its facility in Madison, West Virginia. During the past 12 months, in the course and conduct of its business, the Respondent provided services in excess of \$50,000 for Westmoreland Coal Co., an enterprise doing business in the State of West Virginia. During the past 12 months, Westmoreland Coal Co., in the course and conduct of its business operations, sold and shipped from its West Virginia facilities coal 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(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 November 15, 1990, the Union has been the designated exclusive collective-bargaining representative of the unit employees,<sup>2</sup> and since that date has been recognized as such by the Respondent. Such recognition has been embodied in a collective-bargaining agreement, the United Mine Workers of America, District 17 Transportation Agreement of 1990, between the Respondent and the United Mine Workers of America, on behalf of its various districts and locals, including the Union, which is effective by its terms from November 15, 1990, to February 1, 1993.<sup>3</sup>

Since February 22, the Respondent has failed to continue in full force and effect all the terms and conditions of the collective-bargaining agreement by failing to make contributions to the United Mine Workers Health and Retirement Funds as provided for in the agreement. The terms and conditions of the agreement that the Respondent has failed to

<sup>2</sup> The unit is composed of 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 water way or rail not owned by the Respondent), repair and maintenance work normally performed at the mine site or at a central shop 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 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.

<sup>3</sup> Par. 6 of the complaint inadvertently states that the agreement is "effective by its terms for the period November 15, 1991 to February 1, 1993." However, par. 6 and other sections of the complaint, as well as the collective-bargaining agreement itself, make it abundantly clear that the agreement is a 1990 agreement and that it was executed by the Respondent and the Union on November 15, 1990.

continue in full force and effect are mandatory subjects of bargaining. By failing and refusing to continue them in effect, the Respondent has failed and refused to bargain collectively and in good faith with the representative of its employees in violation of Sections 8(a)(5) and (1) and 8(d) of the Act.

#### CONCLUSIONS OF LAW

By unilaterally failing to continue in full force and effect all of the terms and conditions of the collective-bargaining agreement, by failing to make contributions to the Union's Health and Retirement Funds, as provided in the agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 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 action designed to effectuate the policies of the Act. Specifically, we shall order that the Respondent make the contractually required contributions to the Health and Retirement Funds, with any additional amounts owing as provided in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979), and that it make employees whole by reimbursing them for any losses or expenses they incurred because of the Respondent's unlawful failure to contribute to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Long Branch 12 Trucking, Inc., Madison, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with United Mine Workers of America, Local 9735, concerning employees in the following unit:

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 water way or rail not owned by the Respondent), repair and maintenance work normally performed at the mine site or at a central shop 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 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) Failing and refusing to continue in full force and effect the terms of the 1990-1993 collective-bargaining agreement with United Mine Workers of America by unilaterally failing to make contractually required contributions to the United Mine Workers of America Health and Retirement Funds on behalf of unit employees.

(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) Bargain collectively with United Mine Workers of America, Local 9735, concerning employees in the above-described unit.

(b) Make contractually required contributions to the United Mine Workers of America Health and Retirement Funds, in the manner set forth in the remedy section of this decision.

(c) Make the unit employees whole for any losses or expenses they incurred because of the Respondent's unilateral failure to make the contractually required contributions in the manner 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 amounts due under the terms of this Order.

(e) Post at its facility in Madison, West Virginia, copies of the attached notice marked "Appendix."<sup>4</sup> 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 by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<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."

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

#### 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 or refuse to bargain collectively with United Mine Workers of America, Local 9735, concerning employees in the following unit:

All employees of the Employer 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 water way or rail not owned by the Employer), repair and maintenance work normally performed at the mine site or at a central shop of the Employer 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 prepa-

ration facilities owned or operated by the Employer, excluding all 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 fail or refuse to continue in full force and effect the terms of our 1990-1993 collective-bargaining agreement with United Mine Workers of America by unilaterally failing to make contractually required contributions to the United Mine Workers of America Health and Retirement Funds on behalf of unit employees.

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 bargain collectively with United Mine Workers of America, Local 9735, concerning employees in the above-described unit.

WE WILL make the contractually required contributions to the United Mine Workers of America Health and Retirement Funds.

WE WILL make the unit employees whole for any losses or expenses they incurred—because of our unilateral failure to make the contractually required contributions, with interest.

LONG BRANCH 12 TRUCKING, INC.