

**John Brown Harris, Inc. and United Mine Workers
of America, District 29. Case 11-CA-14578**

April 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by the Union on August 19, 1991, the General Counsel of the National Labor Relations Board issued a complaint against John Brown Harris, Inc., the Respondent, alleging that it has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act. On October 21, 1991, the Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations contained therein. By letter dated January 30, 1992, the Respondent's appointed trustee in bankruptcy informed the Regional Director for Region 11 that the Respondent's answer to the complaint was being withdrawn.

On March 30, 1992, the General Counsel filed a Motion for Summary Judgment. On April 1, 1992, 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 the allegations in the . . . complaint shall be deemed to be admitted to be true and may be so found by the Board."

In the absence of good cause being shown for the failure to file a timely answer,¹ we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The withdrawal of the answer by the Respondent's trustee has the same effect as a failure to file an answer. *Maislan Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

i. jurisdiction

The Respondent is a West Virginia corporation engaged in the operation of a coal mine near Lewisburg, West Virginia. During the 12 months preceding issuance of the complaint, the Respondent sold and shipped from its Lewisburg, West Virginia facility 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 on or about February 1, 1988, and at all relevant times, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and, since that date, has been recognized as such by the Respondent. Such recognition was embodied in a collective-bargaining agreement that is effective by its terms from February 1, 1988, to February 1, 1993. Since February 1, 1988, and continuing to date, the Union has been the collective-bargaining representative of the unit employees within the meaning of Section 9(a) of the Act. The appropriate bargaining unit includes:

All employees employed in the mining of coal at Respondent's coal mine near Lewisburg, West Virginia, excluding office clerical employees, guards and supervisors as defined in the Act.

Since on or about February 1, 1988, and particularly on or about March 26, 1991, and continuing to date, the Union has requested the Respondent to bargain with it as the unit employees' exclusive bargaining representative with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment. However, in or about mid-February 1991, the Respondent, without notifying or bargaining with the Union, unilaterally failed and refused to provide unit employees an annual clothing allowance, failed and refused on or about March 26 and March 28, 1991, respectively, and continuing thereafter, to provide health insurance coverage to laid-off and working unit employees, and failed and refused to pay employees at the time of their layoff their accrued benefit days, including sick and personal days, floating vacation days, regular vacation days, and graduated vacation days, as required by the terms of its agreement with the Union. The Respondent also, on or about

April 1, 1991, unilaterally failed and refused to provide employees with holiday pay for the holidays on April 1 and on May 27, 1991. By engaging in the above conduct, the Respondent has violated Section 8(a)(1) and (5) of the Act, as alleged.

CONCLUSIONS OF LAW

By failing and refusing, without notifying or bargaining with the Union, to provide laid-off and working employees with health insurance coverage, failing and refusing to pay employees when they were laid off their accrued benefit days, failing and refusing to provide employees with their annual clothing allowance, and refusing to provide holiday pay for April 1 and May 27, 1991 holidays, as required under the terms of its collective-bargaining agreement with the Union, the Respondent 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 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.

The Respondent shall be ordered to bargain with the Union as the exclusive collective-bargaining representative of the unit employees, and to comply with the terms of its collective-bargaining agreement by providing laid-off and working unit employees with health insurance coverage, paying employees who have been laid off their accrued benefit days, including sick and personal days, floating vacation days, regular vacation days, and graduated vacation days, providing employees with an annual clothing allowance, and by providing employees with holiday pay for the April 1 and May 27, 1991 holidays.

The Respondent shall also be ordered to make whole laid-off and working unit employees for any expenses they may have incurred as a result of the Respondent's failure to provide them with health insurance coverage as required by the contract, 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 prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to make unit employees whole for any loss of earnings or benefits they may have suffered as a result of the Respondent's failure to give effect to and comply with the terms of its collective-bargaining agreement, said amounts to be computed in accordance with the Board's decision in *Ogle Protection*

Service, 183 NLRB 682, 683 (1970), with interest as provided in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, John Brown Harris, Inc., Lewisburg, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America, District 29, as the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit by refusing to comply with the provisions of its collective-bargaining agreement with the Union through its failure and refusal to provide health insurance coverage to laid-off and working unit employees, its refusal to pay employees who are laid off accrued benefit days, including sick days, personal days, floating vacation days, regular vacation days, graduated vacation days, its refusal to provide employees with an annual clothing allowance, and its refusal to pay employees holiday pay for the April 1 and May 27, 1991 holidays. The appropriate unit consists of:

All employees employed in the mining of coal at Respondent's coal mine near Lewisburg, West Virginia, excluding office clerical employees, guards and supervisors as defined in the Act.

(b) 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) Comply with all terms of its collective-bargaining agreement with the Union by providing laid-off and working unit employees with health insurance coverage, paying employees at the time of their layoff their accrued benefit days, providing employees with an annual clothing allowance, and paying employees holiday pay for the April 1 and May 27, 1991 holidays.

(b) Make whole laid-off and/or working unit employees for any expenses they may have incurred as a result of the Respondent's failure and refusal to provide them with health insurance coverage, and for any loss of earnings or benefits sustained by them as a result of the Respondent's refusal to comply with the terms of its collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copy-

ing 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.

(d) Post at its facility in Lewisburg, West Virginia, copies of the attached notice marked "Appendix."² 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.

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

²If 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 refuse to bargain with United Mine Workers of America, District 29, which is

the exclusive collective-bargaining representative of our employees in an appropriate unit, by refusing to provide health insurance coverage for laid-off and working unit employees, refusing to pay employees their accrued benefit days at the time they are laid off, refusing to provide employees an annual clothing allowance, and refusing to pay employees holiday pay, as required by our contract with the Union. The bargaining unit consists of:

All employees employed in the mining of coal at Respondent's coal mine near Lewisburg, West Virginia, excluding office clerical employees, guards and supervisors as defined in the Act.

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 with the Union and comply with the terms of our collective-bargaining agreement by providing laid-off and working unit employees with health insurance coverage, paying accrued benefit days to employees at the time of their layoff, providing employees with an annual clothing allowance, and paying employees holiday pay for the April 1 and May 27, 1991 holidays.

WE WILL make whole laid-off and/or unit employees for any expenses they may have incurred, and for any loss of earnings or benefits they may have sustained, as a result of our failure to provide them with health insurance coverage and our failure to comply with the terms of our collective-bargaining agreement with the Union, with interest.

JOHN BROWN HARRIS, INC.