

National Coal Inc. and United Mine Workers of America. Case 9-CA-29238

May 7, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
OVIATT AND RAUDABAUGH

Upon a charge filed by the Union on January 17, 1992, the General Counsel of the National Labor Relations Board issued a complaint against National Coal Inc., the Respondent, alleging that it has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On April 6, 1992, the General Counsel filed a Motion for Summary Judgment. On April 9, 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 considered 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 by letter dated March 24, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by March 31, 1992, a Motion for Summary Judgment would be filed.¹ To date, no answer has been filed by the Respondent.

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

¹ The letter also served to confirm a March 23, 1992 conversation with Rick E. Jarvis, the Respondent's president, in which the latter indicated he did not intend to file a formal answer to the complaint.

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation engaged in the operation of a coal mine in Holden, West Virginia. During the 12 months preceding issuance of the complaint the Respondent, in the course and conduct of its operations, sold and shipped from its Holden, West Virginia facility goods valued in excess of \$50,000 directly to Island Creek Coal Company, a coal mining operation located in the State of West Virginia. During the same time period, Island Creek Coal Company sold and shipped from its West Virginia facility goods and services 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 about January 1991, and at all relevant times, the Union has been the designated collective-bargaining representative of the Respondent's employees in the appropriate bargaining unit described in the National Bituminous Coal Wage Agreement of 1988,² and has been recognized as such in the parties' most recent collective-bargaining agreement which is effective by its terms from February 1, 1988, to February 1, 1993. At all times since January 1991, the Union has been the exclusive collective-bargaining representative of the unit employees pursuant to Section 9(a) of the Act.

Since about July 17, 1991, and continuing thereafter, the Respondent has refused to comply with the terms of its collective-bargaining agreement as it relates to the unit employees' health insurance benefits. In doing so, we find that the Respondent has failed and refused, and is continuing to fail and refuse, to bargain collectively and in good faith with the Union, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

CONCLUSIONS OF LAW

By refusing since about July 17, 1991, to comply with the terms of its collective-bargaining agreement relating to the unit employees' health insurance benefits, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

² The record does not contain a description of the bargaining unit.

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 comply with the terms of its collective-bargaining agreement relating to the unit employees' health insurance benefits, and shall be ordered to make whole unit employees by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to provide the contractually required health insurance benefits, 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).

ORDER

The National Labor Relations Board orders that the Respondent, National Coal Inc, Holden, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to comply with its collective-bargaining agreement with United Mine Workers of America by not providing employees in the bargaining unit represented by the Union with health insurance benefits as required by the contract.

(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) Provide bargaining unit employees with the health insurance benefits as required by the parties' collective-bargaining agreement.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to provide them with health insurance benefits, 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 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.

(d) Post at its facility in Holden, West Virginia, copies of the attached notice marked "Appendix."³ 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.

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

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."

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 comply with the terms of our collective-bargaining agreement with United Mine Workers of America as it relates to providing health insurance benefits to our employees in the bargaining unit represented by the Union.

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 comply with the health insurance provisions of our contract with the Union, and WE WILL make our employees whole for any expenses they may have incurred as a result of our failure to provide them with the contractually required health insurance benefits, with interest.

NATIONAL COAL INC.