

**First Run, Inc. and District 17, United Mine Workers of America. Case 9-CA-29436**

September 25, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

Upon a charge filed by the Union on March 24, 1992, the General Counsel of the National Labor Relations Board issued a complaint on May 29, 1992, against First Run, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 31, 1992, the General Counsel filed a Motion for Summary Judgment. On September 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 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 counsel for the General Counsel, by letter dated August 10, 1992, notified the Respondent that unless an answer was received by close of business August 18, 1992, 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, has been engaged in the transportation of coal in the vicinity of Switzer, West Virginia. During the 12-month period ending December 31, 1990, which is its most recent completed fiscal year preceding the occurrence of the alleged unfair labor practices, the Respondent, in conducting its

operations, performed services valued in excess of \$50,000 for Bee Tree Mining, Inc., a West Virginia corporation, which itself purchased and received at its West Virginia facility goods valued in excess of \$50,000 directly from 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**

The employees of the Respondent, described in article IA of the National Bituminous Coal Wage Agreement of 1988 (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since March 1, 1988, the Union has been the designated exclusive collective-bargaining representative of the unit and has been recognized as the representative by the Respondent. This 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 locals and districts, including the Union, which is effective by its terms through February 1, 1993.

At all times since March 1, 1988, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 25, 1991, the Respondent has failed to continue in effect all the terms and conditions of the agreement by failing to pay employees time and a half for overtime worked.

Since about November 15, 1991, the Respondent required employees, contrary to the terms of the collective-bargaining contract to work 1 hour a day without pay.

For the month of December 1991, the Respondent failed to continue in effect all the terms and conditions of the agreement by failing to provide employees with medical insurance.

The terms and conditions of employment are mandatory subjects for the purposes of collective bargaining and the Respondent has engaged in the conduct described above without the Union's consent.

About November 15, 1991, the Respondent, by Rod Herndon, at its Switzer, West Virginia facility, bypassed the Union and dealt directly with its employees in the unit by soliciting their agreement to work 1 hour a day without pay, and by requiring them, about January 17, 1992, to sign a waiver of other claims, before issuing them their final paychecks.

**CONCLUSION OF LAW**

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in

good faith with the exclusive collective-bargaining representative of its employees, and has thereby committed unfair labor practices within the meaning of Section 8(a)(1) and (5), Section 8(d), 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, having found that the Respondent has unlawfully failed since September 25, 1991, to pay employees time and a half for overtime worked, and has unlawfully required employees since November 15, 1991, to work 1 hour a day without pay, we shall order the Respondent to make the unit employees whole for any losses attributable to its unlawful conduct in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent has unlawfully failed to provide medical insurance to employees for the month of December 1991, we shall order the Respondent to provide medical insurance to the unit employees as required by the collective-bargaining agreement, and to make the unit employees whole by reimbursing them for any expenses they may have incurred as a result of the Respondent's failure to do so, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

#### ORDER

The National Labor Relations Board orders that the Respondent, First Run, Inc., Switzer, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing to pay employees time and a half for overtime worked, requiring employees to work 1 hour a day without pay, and failing to provide employees with medical insurance.

(b) Bypassing the Union and dealing directly with unit employees by soliciting their agreement to work 1 hour a day without pay, and requiring them to sign a waiver of other claims before issuing them their final paychecks.

(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) On request, bargain collectively and in good faith with the representative of its employees in the unit described in article IA of the National Bituminous Coal Wage Agreement of 1988.

(b) Make unit employees whole for failing to pay them time and a half for overtime worked, requiring them to work 1 hour a day without pay, and failing to provide them with medical insurance, 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, time-cards, 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 Switzer, West Virginia, copies of the attached notice marked "Appendix."<sup>1</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.

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

<sup>1</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."

#### 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 pay employees time and a half for overtime worked as required by our collective-bargaining agreement with District 17, United Mine Workers of America.

WE WILL NOT require employees to work 1 hour a day without pay, contrary to the terms of the collective-bargaining agreement.

WE WILL NOT fail to provide employees with medical insurance as required by the collective-bargaining agreement.

WE WILL NOT bypass the Union and deal directly with employees by soliciting their agreement to work

1 hour a day without pay or requiring them to sign a waiver of other claims before issuing them their final paychecks.

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, on request, bargain collectively and in good faith with the Union as the representative of the employees in the unit described in article IA of the National Bituminous Coal Wage Agreement of 1988.

WE WILL make the unit employees whole for failing to pay them time and a half for overtime worked, requiring them to work 1 hour a day without pay, and failing to provide them with medical insurance, plus interest.

FIRST RUN, INC.