

Gary Enterprises, Inc. and United Mine Workers of America, Sub-District 4. Case 89-CA-30045

February 24, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Union on October 13, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Gary Enterprises, 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 January 22, 1993, the General Counsel filed a Motion for Summary Judgment. On January 26, 1993, 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 December 30, 1992, counsel for the General Counsel notified the Respondent that unless an answer was received by close of business January 11, 1993, a Motion for Summary Judgment would be filed. 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

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of a coal mine in Gary, West Virginia. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the conduct of its operations, sold and

shipped from its Gary, West Virginia facility goods 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(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 February 2, 1988, and at all material times, the Union, pursuant to Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, and has, since then, been recognized as such by the Respondent. That recognition has been embodied in a collective-bargaining agreement between the Respondent and the United Mine Workers of America on behalf of its locals and districts, including the Union, which is effective from February 2, 1988, to February 1, 1993. The appropriate unit consists of:

All employees of Gary Enterprises, Inc. 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 waterway or rail not owned by Gary Enterprises, Inc., repair and maintenance work normally performed at the mine site or a central shop of Gary Enterprises, Inc. 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 Gary Enterprises, Inc., excluding all coal 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.

On or about June 1 and July 1, 1992, respectively, the Respondent, without the Union's consent, failed to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union by failing to remit to the Union dues and assessments deducted from the unit employees' wages, and by failing to maintain contractually required health insurance for all unit employees, which terms and conditions are mandatory subjects of bargaining. We find that by engaging in the above conduct, the Respondent has failed and refused and is failing and refusing to bargain in good faith with the Union as the unit employees' exclusive collective-bargaining representative, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing to remit to the Union the dues and assessments deducted from unit employees' wages, and by

failing to maintain contractually required health insurance for all unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 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.

The Respondent shall be ordered to remit to the Union the dues and assessments that were deducted from unit employees' wages but not sent since about June 1, 1992, with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to maintain and provide unit employees with the health insurance that was required by the contract. The Respondent shall also be required to make unit employees whole for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms and conditions of its agreement with the Union, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

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

1. Cease and desist from

(a) Failing to honor the terms and conditions of its 1988-1993 collective-bargaining agreement with United Mine Workers of America, Sub-District 4, which is the exclusive designated collective-bargaining representative of the Respondent's employees in an appropriate bargaining unit, by failing to remit to the Union dues and assessments that were deducted from unit employees' wages, and by failing to maintain contractually required health insurance for all unit employees. The appropriate bargaining unit consists of:

All employees of Gary Enterprises, Inc. 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 waterway or rail not owned by Gary Enterprises, Inc., repair and maintenance work normally performed at the mine site or a central shop of Gary Enterprises, Inc. 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 Gary Enterprises, Inc., excluding all coal 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) 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) Honor the terms of its collective-bargaining agreement with the Union by remitting to the Union all dues and assessments that have been deducted from unit employees' wages but which have not been remitted since about June 1, 1992, with interest as described in the remedy section of this decision, and by providing all unit employees with contractually required health insurance that has not been provided since about July 1, 1992.

(b) Make whole unit employees for any expenses they may have incurred as a result of the Respondent's failure to continue in effect all the terms and conditions of its agreement with the Union, with interest, as described 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in Gary, West Virginia, copies of the attached notice marked "Appendix."¹ 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.

¹ 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 or refuse to honor all the terms of our 1988–1993 collective-bargaining agreement with United Mine Workers of America, Sub-District 4, which is the exclusive designated collective-bargaining representative of our employees in an appropriate unit, by failing to remit to the Union dues and assessments that have been deducted from the unit employees' wages, and by failing to provide all unit employees with contractually required health insurance. The appropriate bargaining unit consists of:

All employees of Gary Enterprises, Inc. 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 waterway or rail not owned by Gary Enterprises, Inc., repair and maintenance work normally performed at the mine site or a

central shop of Gary Enterprises, Inc. 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 Gary Enterprises, Inc., excluding all coal 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 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 honor the terms and conditions of our agreement with the Union, WE WILL remit to the Union the dues and assessments that were deducted from unit employees' wages but which have not been sent since about June 1, 1992, with interest, and WE WILL provide and maintain the contractually required health insurance for all unit employees that has not been provided since about July 1, 1992.

WE WILL make whole unit employees for any expenses they may have incurred as a result of our failure to continue in effect all the terms and conditions of our agreement with the Union, with interest.

GARY ENTERPRISES, INC.