

**Coalstrip, Inc. and Helen M. Morris, Trustee in  
Bankruptcy and United Mine Workers of  
America, District 17, Sub-Division. Case 9-CA-  
30167**

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed on November 20, 1992, by the United Mine Workers of America, District 17, Sub-District 1 (the Union), the General Counsel of the National Labor Relations Board issued an amended complaint on April 15, 1993, against Coalstrip, Inc. and Helen M. Morris, Trustee in Bankruptcy (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although the Respondent filed an answer to the original complaint, it subsequently advised the General Counsel after issuance of the amended complaint that it was withdrawing its answer in the matter, and did not thereafter file an answer to the amended complaint.

On May 19, 1993 the General Counsel filed a Motion for Summary Judgment and memorandum in support with the Board. On May 24, 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.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide 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. In addition, the amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended complaint will be considered admitted. Further, as indicated above, the undisputed allegations in the Motion for Summary Judgment disclose that although Respondent filed an answer to the original complaint, the Respondent subsequently advised the General Counsel, after issuance of the amended complaint, that it was withdrawing its answer in the matter, and did not thereafter file an answer to the amended complaint.

Accordingly, as the Respondent has withdrawn its answer to the original complaint, and in the absence of good cause being shown for the failure to file a timely answer to the amended complaint, we grant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, Respondent Coalstrip, a corporation, has been engaged in the operation of a surface coal mine at London, West Virginia. During the 12 months preceding issuance of the amended complaint, Respondent Coalstrip, in conducting its operations, performed services valued in excess of \$50,000 for Cannelton Industries, Inc., a West Virginia nonretail enterprise directly engaged in interstate commerce. We find that Respondent Coalstrip 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. Since about October 1, 1992, Helen M. Morris has been duly designated by the U.S. Bankruptcy Court for the Southern District of West Virginia as the trustee in bankruptcy of Respondent Coalstrip.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees of [Respondent Coalstrip] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent Coalstrip]), repair and maintenance work normally performed at the mine site or at a central shop of [Respondent Coalstrip] 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 [Respondent Coalstrip] 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.

Since at least 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements between Respondent and the International Union, United Mine Workers of America on behalf of its locals and districts, including the Union, the most recent of which was effective through February 1, 1993.

At all times since at least 1990, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since on or about August 15, 1992, the Respondent has failed to continue in effect all the terms and conditions of the agreement by terminating employee health insurance coverage and failing to pay graduated vacation, personal days, floating days, and other contractual benefits.

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

#### CONCLUSION OF LAW

By the conduct described above, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and 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 Respondent has violated Section 8(a)(5) and (1) by failing since August 15, 1992, to continue in effect all the terms and conditions of the 1990-1993 collective-bargaining agreement by terminating employee health insurance coverage and failing to pay graduated vacation, personal days, floating days, and other contractual benefits, we shall order Respondent to abide by the agreement and to make whole its unit employees by making all payments that have not been made and that would have been made but for Respondent's failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Coalstrip, Inc. and Helen M. Morris,

Trustee in Bankruptcy, London, 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 its 1990-1993 collective-bargaining agreement with the Union in the unit described below by eliminating employee health insurance coverage and failing to pay graduated vacation, personal days, floating days, and other contractual benefits to its unit employees:

All employees of [Respondent Coalstrip] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except by waterway or rail not owned by [Respondent Coalstrip]), repair and maintenance work normally performed at the mine site or at a central shop of [Respondent Coalstrip] 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 [Respondent Coalstrip] 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 Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the terms and conditions of the 1990-1993 collective-bargaining agreement by providing employee health insurance coverage and paying graduated vacation, personal days, floating days, and other contractual benefits to its unit employees, until a new agreement or valid impasse in bargaining is reached.

(b) Make whole the unit employees for any loss of benefits or other expenses suffered as a result of its failure to abide by the terms of the 1990-1993 collective-bargaining agreement, in the manner 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 amount of backpay due under the terms of this Order.

(d) Post at its facility in London, West Virginia, copies of the attached notice marked "Appendix."<sup>1</sup>

<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."

Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by 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 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 Respondent has taken to comply.

Dated, Washington, D.C. June 18, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) 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 continue in effect all the terms and conditions of our 1990-1993 collective-bargaining

agreement with United Mine Workers, District 17, Sub-District 1, in the unit described below, by terminating employee health insurance coverage and failing to pay graduated vacation, personal days, floating days, and other contractual benefits to our unit employees:

All employees of [Coalstrip] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, cleaning of coal and transportation of coal (except by waterway or rail not owned by [Coalstrip]), repair and maintenance work normally performed at the mine site or at a central shop of [Coalstrip] 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 [Coalstrip] 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 abide by the terms and conditions of the 1990-1993 collective-bargaining agreement by providing employee health insurance coverage and paying graduated vacation, personal days, floating days, and other contractual benefits to our unit employees.

WE WILL make whole the unit employees for any loss of benefits or other expenses suffered as a result of our failure to abide by the terms of the 1990-1993 collective-bargaining agreement in the above respects.

COALSTRIP, INC. AND HELEN M. MORRIS, TRUSTEE IN BANKRUPTCY