Steam Coal Sales, Inc. *and* United Mine Workers of America. Case 9–CA–29759

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the United Mine Workers of America, the Union, on July 14, 1992,[1] the General Counsel of the National Labor Relations Board issued an amended complaint on May 13, 1993, against Steam Coal Sales, Inc., the Respondent, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On June 3, 1993, the Respondent filed an answer admitting the allegations of the amended complaint.

The amended complaint alleges, and the Respondent admits, that it is a party to a collective-bargaining agreement effective from 1988 through February 1, 1993,[2] and that since January 15, 1992, it has failed to provide appropriate medical insurance and to pay the medical expenses of its unit employees. The Respondent, while admitting these allegations, asserts that its joint venture partners, Island Creek Corporation, Island Creek Coal Company and/or Laurel Run Mining Company are likewise liable for these actions.

On June 14, 1993, the General Counsel filed a Motion for Summary Judgment. On June 17, 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

It is well established that Section 8(a)(5) and (1) of the Act prohibits an employer that is a party to a collective-bargaining agreement from modifying the terms and conditions of employment established by that agreement without obtaining the consent of the union. *Nick Robilotto, Inc.*, 292 NLRB 1279 (1989), and cases cited there. The Respondent has admitted that it unilaterally failed to abide by the terms and conditions of employment in the collective-bargaining agreement by failing to pay its unit employees' medical insurance or their medical expenses. Accordingly, the Respondent has admitted all the facts material to a resolution of the unfair labor practice issues raised by the amended complaint.

The Respondent's defense that its joint venture partners are also liable does not constitute an adequate defense to the allegation that it has violated Section 8(a)(5) and (1) of the Act. Further, the General Counsel has not named any of the entities named by the Respondent as its joint venture partners as either respondents or parties in interest in the amended complaint. Therefore, they are not properly a part of this adjudication and the Respondent's request that remedial relief be assessed against them can not be granted.[3] Accordingly, because we find the Respondent has not asserted an adequate defense and because there are no material facts in dispute, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Steam Coal Sales, Inc., and Paybra Mining Company, Inc., constitute, for the reasons stated in paragraph 2(a) of the complaint, a single-integrated business enterprise and a single employer. The Respondent and Paybra are engaged in the mining of coal in the vicinity of Man, West Virginia. During the 12 months preceding issuance of the amended complaint, the Respondent and Paybra, collectively, sold and shipped goods valued in excess of $50,000 directly to Island Creek Coal Company, a nonretail enterprise located within the State of West Virginia. During this same period, Island Creek sold and shipped from its West Virginia facilities 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(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 describe in article IA of the National Bituminous Coal Wage Agreement of 1988 constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about December 14, 1990, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (the National Bituminous Coal Wage Agreement of 1988) between the Respondent and the Union that was effective through February 1, 1993.

Since about January 15, 1992, the Respondent has failed to continue in effect all the terms and conditions of the parties' collective-bargaining agreement by fail-

[1] All dates are in 1992 unless indicated otherwise.

[2] The National Bituminous Coal Wage Agreement of 1988.

[3] See generally, *Teamsters Local 227 (American Bakeries)*, 236 NLRB 656 (1978).

ing to provide appropriate medical insurance and to pay the medical expenses of the unit employees.

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

We find that by the conduct described above, the Respondent has unilaterally failed and refused to bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By unilaterally ceasing to continue in effect all the terms and conditions of the collective-bargaining agreement by failing since January 15, 1992, to provide appropriate medical insurance and to pay the medical expenses of its 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 violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to abide by all the terms of the collective-bargaining agreement by providing the contractually required medical insurance and by paying the medical expenses of the unit employees which has not been done since January 15, and to make its unit employees whole by reimbursing them for any expenses or losses they incurred as the result of the Respondent's failure to provide the contractually required medical insurance and medical expense payments. See, e.g., *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All such backpay shall be computed in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

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

1. Cease and desist from

(a) Refusing and failing to bargain collectively with the United Mine Workers of America, the Union, as the exclusive bargaining representative of the employees in the appropriate unit by unilaterally failing to provide medical insurance and to pay the medical expenses of its unit employees, as required by its collective-bargaining agreement with the Union. The appropriate unit is:

> All employees of the Respondent described in Article IA of the National Bituminous Coal Wage Agreement of 1988.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

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

(a) Adhere to and abide by all the terms of the Respondent's collective-bargaining agreement (the National Bituminous Coal Wage Agreement of 1988) with the Union by providing the appropriate medical insurance and paying the medical expenses of the unit employees.

(b) Make whole its bargaining unit employees, in the manner set forth in the remedy section of this decision, for any losses they suffered as a result of the Respondent's unlawful failure since January 15, 1992, to provide them with medical insurance and to pay their medical expenses, as required by its collective-bargaining agreement with the Union.

(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 Man, West Virginia facilities copies of the attached notice marked "Appendix."[4] 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.

---

[4] 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."

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

Dated, Washington, D.C. September 22, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

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 refuse and fail to bargain collectively with the United Mine Workers of America, the Union, as the exclusive bargaining representative of our employees in the appropriate unit by unilaterally failing to provide contractually required medical insurance and to pay contractually required medical expenses of our unit employees. The appropriate unit is:

> All employees of the Employer described in Article IA of the National Bituminous Coal Wage Agreement of 1988.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed under Section 7 of the Act.

WE WILL adhere to and abide by all the terms of our collective-bargaining agreement with the Union (the National Bituminous Coal Wage Agreement of 1988) by providing the appropriate medical insurance and paying the medical expenses of our unit employees.

WE WILL make our unit employees whole, with interest, for any losses they suffered as a result of our unlawful failure since January 15, 1992, to provide them with medical insurance and to pay their medical expenses, as required by our collective-bargaining agreement with the Union.

STEAM COAL SALES, INC.