

**Resource Coal Energies, Inc. and District 31, United
Mine Workers of America. Case 9-CA-31999**

November 10, 1994

DECISION AND ORDER

BY MEMBERS DEVANEY, BROWNING, AND COHEN

Upon a charge filed by the Union on July 13, 1994, the General Counsel of the National Labor Relations Board issued a complaint on August 4, 1994, against Resource Coal Energies, 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 October 7, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On October 12, 1994, 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

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 complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Memorandum in Support of Motion for Summary Judgment disclose that the Region, by letter dated September 19, 1994, notified the Respondent that unless an answer was received by September 26, 1994, 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

At all material times, the Respondent, a corporation, was engaged in the operation of a coal preparation plant at Route 19, Nicholas County, West Virginia. During the 12 months prior to April 4, 1994, the date it ceased operations, the Respondent, in conducting its operations, derived revenues in excess of \$50,000 for services performed for American Coal Resources, Inc.,

a nonretail enterprise located within the State of West Virginia. During the same 12-month period, American Coal Resources, Inc., in conducting its coal mining operations, sold and shipped from its Summersville, West Virginia facility goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent at all material times has been 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

The employees 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 about February 1, 1988, 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 the Respondent. This recognition has been embodied in a collective-bargaining agreement (National Bituminous Coal Wage Agreement of 1988) between the Respondent and the Union which was effective from February 1, 1988, through February 1, 1993. Since about February 1, 1988, and at all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 13, 1994, and thereafter, the Respondent failed to continue in effect all the terms and conditions of the agreement described above for the unit employees employed at its coal preparation plant at Route 19, Nicholas County, West Virginia, by failing to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and by failing to provide appropriate medical insurance and medical expenses. Although the foregoing terms and conditions relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and 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 engaged in unfair labor practices affecting

commerce within the meaning of Section 8(a)(1) and (5) 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 violated Section 8(a)(1) and (5) by failing, since January 13, 1994, to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and to provide appropriate medical insurance and medical expenses for its unit employees, we shall order the Respondent to honor the terms of the 1988–1993 agreement until a new agreement or good-faith impasse, and to make the unit employees whole for any loss of earnings and expenses attributable to its failure, since January 13, 1994, to pay such contractually required benefits and to provide appropriate medical insurance and medical expenses. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, as the complaint indicates that the Respondent has ceased operations at its Nicholas County, West Virginia plant, we shall order the Respondent to mail copies of the attached notice to all unit employees at their last known addresses.¹

ORDER

The National Labor Relations Board orders that the Respondent, Resource Coal Energies, Inc., Nicholas County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with District 31, United Mine Workers of America, as the exclusive representative of the employees described in article IA of the National Bituminous Coal Wage Agreement of 1988, by failing to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and by failing to provide appropriate medical insurance and medical expenses.

(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.

¹ We leave to the compliance stage of this proceeding the effects of the Respondent's ceasing operations.

(a) Honor the terms and conditions of the 1988–1993 collective-bargaining agreement with the Union, until a new agreement or good-faith impasse in negotiations, and make whole the unit employees for any loss of earnings and expenses resulting from its failure, since January 13, 1994, to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and to provide appropriate medical insurance and medical expenses, in the manner set forth in the remedy section of this decision.

(b) 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 amount of backpay due under the terms of this Order.

(c) Mail copies of the attached notice marked "Appendix"² to all unit employees at their last known address. 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 mailed by the Respondent immediately upon receipt.

(d) 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. November 10, 1994

Dennis M. Devaney, Member

Margaret A. Browning, Member

Charles I. Cohen, 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.

² 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."

WE WILL NOT fail and refuse to bargain in good faith with District 31, United Mine Workers of America, as the exclusive representative of the employees described in article IA of the National Bituminous Coal Wage Agreement of 1988, by failing to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and by failing to provide appropriate medical insurance and medical expenses.

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

WE WILL honor the terms and conditions of the 1988-1993 collective-bargaining agreement with the Union, until a new agreement or good-faith impasse in negotiations, and WE WILL make whole the unit employees for any loss of earnings and expenses resulting from our failure, since January 13, 1994, to pay contractually required benefits, including graduated vacation days, holidays, sick days, vacation days, personal days, floating days, and the clothing allowance, and to provide appropriate medical insurance and medical expenses.

RESOURCE COAL ENERGIES, INC.