

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

M.E.T. Transport, Inc. and Trustees of the United Mine Workers of America Health and Retirement Funds. Case 9-CA-31774

April 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

Upon a charge filed by the Trustees of the United Mine Workers of America Health and Retirement Funds on April 8, 1994, the General Counsel of the National Labor Relations Board issued a complaint on May 27, 1994, against M.E.T. Transport, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On June 13, 1994, the Respondent filed an answer to the complaint. However, by letter dated March 7, 1995, the Respondent withdrew its answer.

On March 15, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 17, 1995, 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 Motion for Summary Judgment disclose that although the Respondent initially filed an answer to the complaint, it subsequently withdrew that answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.¹

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the transportation of coal at various locations in the State of West Virginia. During the 12-month period ending December 31, 1993, the Respondent, in conducting its operations, performed services valued in excess of \$50,000 for Cannelton Industries, Inc., a nonretail enterprise located within the State of West Virginia, which, in turn, meets the Board's direct jurisdictional standards. 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 United Mine Workers of America, 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 I(A) 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 May 3, 1988, the Union has been the designated exclusive collective-bargaining representative of the unit and has since been recognized as such by the Respondent. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union, which was effective through February 1, 1993.

At all times since May 3, 1988, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About October 8, 1993, and continuing thereafter, the Respondent failed to continue in effect all the terms and conditions of the agreement by failing to make contributions on behalf of its employees to the United Mine Workers of America Health and Retirement Funds as required by the collective-bargaining agreement. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining and the Respondent has engaged in the conduct described above without bargaining with the Union and without its consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its unit employees and has thereby 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. Having found that Respondent has violated Section 8(a)(5) and (1) by failing, since October 8, 1993, to make contractually required contributions to the United Mine Workers of America Health and Retirement Funds, we shall order the Respondent to honor the terms of the collective-bargaining agreement which was effective through February 1, 1993, until a new agreement or good-faith impasse, and to make whole its unit employees by making all such delinquent contributions, including any additional amounts applicable to such delinquent payments as determined in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *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).²

ORDER

The National Labor Relations Board orders that the Respondent, M.E.T. Transport, Inc., Bluefield, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the United Mine Workers of America as the exclusive bargaining representative of its employees described in article I(A) of the National Bituminous Coal Wage Agreement of 1988, by failing to make contractually required contributions on behalf of its unit employees to the United Mine Workers of America Health and Retirement Funds.

(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 the collective-bargaining agreement which was effective through February 1, 1993, until a new agreement or good-faith impasse in negotiations, and make whole the unit employees for

²To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

any loss of benefits or expenses ensuing from its failure, since October 8, 1993, to make contractually required contributions to the United Mine Workers of America Health and Retirement Funds on behalf of the unit employees, as 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) Post at its facility in Bluefield, West Virginia, copies of the attached notice marked "Appendix."³ 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.

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

³If 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 and refuse to bargain with the United Mine Workers of America as the exclusive bargaining representative of our employees described in article I(A) of the National Bituminous Coal Wage Agreement of 1988, by failing to make contractually required contributions on behalf of our unit employees to the United Mine Workers of America Health and Retirement Funds.

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 of the collective-bargaining agreement which was effective through February 1, 1993, until a new agreement or good-faith impasse in negotiations, and WE WILL make whole the unit em-

ployees for any loss of benefits or expenses ensuing from our failure, since October 8, 1993, to make contractually required contributions to the United Mine

Workers of America Health and Retirement Funds on behalf of the unit employees.

M.E.T. TRANSPORT, INC.