

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.

Navaro Mining, Inc. and United Mine Workers of America, District 29. Case 9-CA-31644

January 27, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

Upon a charge filed by the Union on March 3, 1994, the General Counsel of the National Labor Relations Board issued a complaint on April 6, 1994, against Navaro Mining, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. On December 5, 1994, the Respondent withdrew the answer it had filed on April 20, 1994.

On December 22, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On December 27, 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. Here, the Motion for Summary Judgment indicates that although the Respondent initially filed an answer to the complaint, that answer has been withdrawn. Such a withdrawal has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be admitted to be true.¹

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the operation of a coal mine in the vicinity of Gary, West Virginia. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting 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

The employees of the Respondent described in article 1A of the National Bituminous Coal Wage Agreement of 1988 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about 1978 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 successive collective-bargaining agreements between the Respondent and the International Union, United Mine Workers of America, on behalf of the Union and its other affiliated districts and locals, the most recent of which was effective from February 1, 1988, through February 1, 1993. At all times since 1978, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 28, 1994, the Respondent terminated the health insurance coverage of the unit employees. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording it 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 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.

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

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 has violated Section 8(a)(5) and (1) by terminating the health insurance coverage for its unit employees about February 28, 1994, we shall order the Respondent to restore the unit employees' health insurance coverage and make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), *enfd.* 661 F.2d 940 (9th Cir. 1981), 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, Navaro Mining, Inc., Thorpe, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally terminating the health insurance coverage of its employees in the unit described in article 1A 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 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) Restore the unit employees' health insurance coverage and make the unit employees whole by reimbursing them, with interest, for any expenses ensuing from the Respondent's unlawful conduct, 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 Gary, West Virginia, copies of the attached notice marked "Appendix."³ Copies of

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.

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

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.

Dated, Washington, D.C. January 27, 1995

James M. Stephens, Member

Charles I. Cohen, Member

John C. Truesdale, 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 unilaterally terminate the health insurance coverage of our employees in the unit described in article 1A of the National Bituminous Coal Wage Agreement of 1988.

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 restore our unit employees' health insurance coverage and make them whole by reimbursing them, with interest, for any expenses ensuing from our unlawful conduct.

NAVARO MINING, INC.

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.'