

M & H Coal Co. and United Mine Workers of America, Local Union 8217. Cases 9-CA-32104-1, -2

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon charges filed by the Union on August 18, 1994, and amended charges filed September 29, 1994, the General Counsel of the National Labor Relations Board issued an original complaint on September 30, 1994, and an amended complaint on October 24, 1994, against M & H Coal Co., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

By letter dated February 8, 1995, the Region notified the Respondent that unless an answer were received immediately, a Motion for Summary Judgment would be filed. A copy of the February 8, 1995 letter was also sent to John A. Rollins, the Respondent's bankruptcy attorney. Rollins responded by letter dated February 10, 1995, in which he advised that his office was not authorized to appear on behalf of the Respondent, that the Respondent had ceased business and converted its chapter 11 bankruptcy proceeding to one under chapter 7, and that due to the bankruptcy proceedings the Respondent was unable to actively participate in the trial scheduled for April 18, 1995. The letter also stated that "[o]ther action on behalf of the Board would be useless as there are no longer any officers, employees, operating assets or other matters which could be dealt with by [the Respondent]."

On February 24, 1995, the General Counsel filed a Motion for Summary Judgment with the Board, with exhibits and a supporting memorandum attached. On February 27, 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 Region, by letter dated February 8, 1995, notified the Respondent that unless an answer were received immediately, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,¹ 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 times material, the Respondent, a corporation, has been engaged in the extraction of coal at its facility in Mallory, West Virginia, where during the past calendar year, it sold and shipped from its 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 IA of the Bituminous Coal Wage Agreement of 1993 constitute an appropriate unit for purposes of collective bargaining under Section 9(b) of the Act. Since 1987, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit. The Union and the Respondent have been parties to successive collective-bargaining agreements, the most recent of which is effective from December 16, 1993, through August 1, 1998.

On about February 18, 1994, the Respondent ceased providing health care benefits to the employees in the unit as required by the terms of the parties' collective-bargaining agreement. On about June 30, 1994, the Respondent failed to pay wages accumulated from a wage increase applied retroactively in accordance with the terms of the collective-bargaining agreement. The Respondent engaged in this conduct without the Union's consent.

By failing and refusing to abide by the terms and conditions of its collective-bargaining agreement with the Union in the manner described above, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

¹ It is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Sorensen Industries*, 290 NLRB 1132, 1133 (1988); *Image Systems*, 285 NLRB 370, 371 (1987); *Olympic Fruit & Produce Co.*, 261 NLRB 322, 323 (1982).

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed to continue in effect all the terms and conditions of employment in the collective-bargaining agreement 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 the Respondent unlawfully failed to continue in full force and effect the terms and conditions of employment of its 1993–1998 collective-bargaining agreement with the Union, we shall order it to comply with those terms and conditions of employment. Specifically, we shall order the Respondent to make unit employees whole by making the appropriate contributions to maintain employees' health care benefits.² This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of health insurance coverage,³ as well as for any medical bills they may have paid directly to health care providers that the contractual policies would have covered. *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). We shall also order the Respondent to make whole unit employees, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), for any loss of wages suffered as a result of its unlawful repudiation of contractual provisions. Interest on amounts owing to unit employees shall 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, M & H Coal Co., Mallory, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with the United Mine Workers of America, Local Union 8217 as the exclusive collective-bargaining representative of an appropriate unit of the Respondent's employees, by failing to continue in effect all the terms and conditions of its collective-bargaining agreement with the Union,

²See *Merryweather Optical*, 240 NLRB 1213, 1216 fn. 7 (1979).

³To 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.

by ceasing to provide health care benefits to unit employees and by failing to pay wages accumulated from a wage increase applied retroactively in accordance with the terms of the contract.

(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) Give effect to the terms and conditions of employment of its collective-bargaining agreement with the Union.

(b) Make whole, in the manner set forth in the remedy section of this decision, unit employees for any losses resulting from the Respondent's failure to continue in effect the terms and conditions of its collective-bargaining agreement with the Union. The employees of the Respondent described in article IA of the Bituminous Coal Wage Agreement of 1993 constitute an appropriate unit.

(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 Mallory, West Virginia, 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.

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

⁴If 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 refuse to bargain in good faith with the United Mine Workers of America, Local Union 8217 as the exclusive collective-bargaining representative of an appropriate unit of our employees by failing to continue in effect all the terms and conditions of our collective-bargaining agreement with the Union, by ceasing to provide health care benefits to unit employees, and by failing to pay wages accumulated from a wage increase applied retroactively in accordance with the terms of our contract.

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 give effect to the terms and conditions of employment of our collective-bargaining agreement with the Union.

WE WILL make whole unit employees for any losses resulting from our failure to continue in effect the terms and conditions of our collective-bargaining agreement with the Union. Our employees described in article IA of the Bituminous Coal Wage Agreement of 1993 constitute an appropriate unit.

M & H COAL CO.