

**Straight Creek Mining, Inc. and United Mine Workers of America, AFL-CIO. Case 10-CA-28643**

May 21, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The issue in this case<sup>1</sup> is whether the Respondent, as a successor employer, violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union that represented the predecessor employer's employees. The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order as modified.<sup>3</sup>

We agree with the judge that the 54-month hiatus between the cessation of coal production activities by the predecessor employer and the startup of the Respondent's mining operation did not relieve the Respondent of a statutory obligation to bargain with the Union as the continuing majority representative of production and maintenance unit employees at the mine. The totality of circumstances cited by the judge demonstrates a "substantial continuity" of identity between the predecessor and the successor Respondent. See *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 45 (1987). The significance of the hiatus is lessened by evidence that the predecessor remained nominally in existence during part of the hiatus, the Union and the predecessor's striking employees remained active, and the mine remained available for reopening.<sup>4</sup> Further-

<sup>1</sup> On December 17, 1996, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief and the Union filed an answering brief.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> We shall modify the judge's recommended Order by eliminating the reference to a 14-day period in the provision mandating recognition of the Union. We shall also modify the judge's recommended Order to include the narrow cease-and-desist language traditionally used by the Board.

<sup>4</sup> The actions of Kopper Glo Fuels, Inc. further support this successorship finding. Kopper Glo was the lessee of mineral rights at the Clarifield, Tennessee mines and owned or leased equipment that the predecessor used to extract coal for Kopper Glo. When the predecessor announced that it was going out of business, Kopper Glo immediately commenced efforts to sell the leasehold operation and, pending a sale, hired some of the predecessor's employees to maintain a portion of the mining operation. In these circumstances, even though the predecessor announced that it would no longer mine the Clarifield property, the Union and employees reasonably could believe that mining operations would resume there.

more, as set forth fully in the judge's decision, all other factors relevant to an analysis of the successorship issue strongly support finding the requisite continuity of employing enterprise. These factors sharply distinguish this case from *CitiSteel USA, Inc. v. NLRB*, 53 F.3d 350, 354-356 (D.C. Cir. 1995), on which the Respondent here relies. In *CitiSteel*, the court rejected the Board's successorship finding on the basis of both a lengthy hiatus, during which, the court found, the predecessor's employees lost any reasonable expectation of recall, and of substantial changes in the new employing entity's operations and working conditions.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Straight Creek Mining, Inc., Clairfield, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Recognize the United Mine Workers of America, AFL-CIO, as the exclusive representative of the employees in the unit described above and, on request, bargain in good faith with the Union concerning hours, wages, and other terms and conditions of employment, and, if an agreement is reached, reduce it to writing and sign it."

2. Insert the following as paragraph 2(b).

"(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."

3. Substitute the attached notice for that of the administrative law judge.

**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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain in good faith with United Mine Workers of America, AFL-CIO with respect to wages, hours, and other terms and conditions of employment of our employees in the unit described here:

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at Colquest's facilities in Clairfield, Claiborne County, Tennessee, but excluding all independent truck drivers, clerical and professional personnel and supervisors as defined in the Act constituted a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

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 recognize the United Mine Workers of America, AFL-CIO as the exclusive collective-bargaining representative.

WE WILL, on request, bargain in good faith with the Union with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached embody the understanding in a signed agreement.

#### STRAIGHT CREEK MINING, INC.

*J. Howard Trimble, Esq. and Andrew Brenner, Esq.*, for the General Counsel.

*Robert N. Townsend, Esq. (Arnett, Draper & Hagood)*, of Knoxville, Tennessee, for the Respondent.

*George N. Davies, Esq. (Nakamura & Quinn)*, of Birmingham, Alabama, for the Charging Party.

#### DECISION

##### STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. The two issues presented in this case is whether Straight Creek Mining, Inc. (Respondent) is a legal successor to Colquest Energy Inc. (Colquest) and if so whether Straight Creek, Respondent, violated Section 8(a)(1) and (5) of the Act by failing and refusing to recognize and bargain with United Mine Workers of America, AFL-CIO (the Union). I find the answer to both issues to be affirmative. This case was heard by me on March 7, 1996. Complaint and notice of hearing was issued by the Regional Director for Region 10 (Atlanta, Georgia) September 15, arising out of a charge filed by the Union on July 31, 1995.

All parties were afforded the opportunity to call, examine, and cross-examine witnesses, to present all other relevant evidence, and to file posthearing briefs. Briefs were filed by the Respondent, the Charging Party, and the General Counsel. All testimony and evidence have been duly considered. On the entire record, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The pleadings and stipulations by the parties (Jt. Exh. 1) establish that Respondent is a Tennessee corporation with a facility located at Clairfield, Tennessee, where it is engaged in deep underground mining of coal and based on its current level of operation, during the first calendar year of its existence, will sell and ship from its Clairfield facility goods valued in excess of \$50,000 to customers within the State of Tennessee, including Kopper-Glo Fuels, Inc. (Kopper-Glo), which enterprise, in turn, sells and ships goods valued in excess of \$50,000 directly to customers located outside the State of Tennessee. Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

##### II. LABOR ORGANIZATION INVOLVED

The pleadings establish that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

##### II. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. Background and Facts

There are no crucial factual disputes. For a number of years Colquest had operated three underground mines at Clairfield, Tennessee, identified as Colquest mines 1, 2, and 3. Colquest sold all of its production to Kopper-Glo Fuels, Inc., a West Virginia corporation, who in turn sold the coal to other customers.

On June 29, 1990, Region 10 of the Board conducted an election in a unit of

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at Colquest's facilities in Clairfield, Claiborne County, Tennessee, but excluding all independent truck drivers, clerical and professional personnel and supervisors as defined in the Act constituted a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

The Union prevailed and the Employer filed objections. After a Regional field investigation on January 18, 1991, the Union was certified. The Employer petitioned for review in the Sixth Circuit Court of Appeals and the Board cross-petitioned for enforcement of its bargaining order. On June 2, 1992, the Sixth Circuit issued its decision 965 F.2d 116 in which it remanded the case to the Board for a factual finding to resolve alleged threats to employees by union adherents and officials. Pursuant thereto on October 29, 1993, the Region reissued a certification of representative.

In the meanwhile following the election, Colquest closed one of its three underground mines and the entire section of another mine, laying off 19 of its 75 employees. On October 1, 1990, the Union commenced a strike in protest of the layoffs by Colquest.

By letter dated February 19, 1992, Colquest informed the Union that it would continue operations only to the extent

necessary to complete the closing of its business (G.C. Exh. 5). Again in late 1992 or early 1993, Colquest announced that it was going out of business. Colquest, which had not produced any coal since the strike began continued to have its supervisors come to work to maintain the mines and equipment. Notwithstanding Colquest's announcement that it was ceasing operations, employees remained on strike for 46-1/2 months, until mid-August 1994. The Union, which had been paying benefits to the striking employees, terminated benefits approximately 1 month earlier on July 15, 1994.

Kopper-Glo leased the mines and owned or leased the equipment with which Colquest and later Straight Creek operated the mines. There was no coal production from these mines after the October 1, 1990 strike until about March 1, 1995, when Straight Creek started mining from what had formerly been Colquest mine 2. When the strike commenced Colquest was operating only one mine and a part another mine. Subsequently Kopper-Glo completely filled and sealed Colquest mines 1 and 3, leaving only mine 2 operable. The record reveals that it takes from 6 months to 2 years, depending on a number of factors to fill and seal a mine.

During the strike Kopper-Glo hired Colquest's former mining superintendent, John Taylor, to maintain and preserve mine 2 and preserve approximately \$300,000 worth of equipment. Taylor hired about three former Colquest employees to assist him. It appears they are still employed by Respondent.

It is admitted that a majority of Respondent's employees were employees of Colquest at the time of the strike. It is also admitted that the current employees of Respondent perform their work in essentially the same way, using the same equipment and that five of Respondent's six supervisors had similar positions with Colquest. It is also admitted that Respondent like its predecessor, Colquest operates as a contract miner for Kopper-Glo and delivers all its mined coal to Kopper-Glo for processing and sale.

Ronald Carroll, who was previously the Coal broker for Kopper-Glo and is president and sole owner of Respondent, was dramatically effected when Colquest went out of business. In March or April 1994, Carroll met with local union secretary, Dexter Marlow and discussed his own coal mining company, discussed the rehiring of the striking mine workers. Marlow testified that Carroll indicated he could not do this if the mines remained union. Carroll denies this statement. Marlow also testified to a second meeting where the same subject was discussed in a similar manner.

#### B. Analyzing Successorship

The General Counsel and the Respondent appear to agree that all elements establishing successorship are set forth.

In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Supreme Court announced that an employer; (1) who hires a significant number of employees from a predecessor's facility, constituting a majority of the new employer's work force and, (2) who conducts basically the same operation as that of the former employer, is a successor to the predecessor's bargaining obligations.

According to the successorship doctrine, an employer will be considered a successor if "a substantial continuity of identity" between the present employer and the predecessor exists. Determining whether a substantial continuity of identity exists between two employing entities requires the application of a seven-factor test. *Boarder Steel Rolling Mills*,

*Inc.*, 204 NLRB 814, 821 (1973). The tests as articulated by the Supreme Court in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 43 (1987), considers such factors as:

whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors, whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

No one factor is determinative, rather it is the totality of the circumstances that should be examined in order to decide whether an employer is a successor to a predecessor's bargaining obligations. Respondent, satisfying all of the *Fall River* criteria, continues the employing entity and is thus, the legal successor of Colquest.

However, the Respondent argues that Straight Creek is not a successor to Colquest due in large part to the hiatus of 54 months during which no coal was produced at the mines after the union employees struck on October 1, 1990, and other events occurring during that time. Among the other events recited by Respondent that quickly after the strike as early as July 1991, Colquest determined that it was going out of the coal mining business forever, and communicated that decision to Kopper-Glo who immediately commenced efforts to sell its entire leasehold operations at the former Colquest site. Colquest also communicated this intent to the Union and bargained over the effects of its going out of business. It notified the Union in writing about February 1992, and amended its corporate charter to specifically state it was going out of business.

Despite this notice the Union continued to picket for a total of more than 46 months, except for the last month, the employees on strike were receiving strike benefits from the Union.

The Respondent argues that this announcement by Colquest and its amending its charter was sufficient to convince a reasonable person that there was no expectation of rehire which is one of the keys in a successorship case.

The expectation of rehire is an element in successorship but it is not controlling in this case. The Union and the striking employees could certainly assume that even if Colquest went out of the coal mining business some one would acquire it. Colquest 2 is the only mine prepared for production and if this occurred they might be entitled to be hired by the successor.

As noted above, the General Counsel and the Respondent do not disagree on the elements of successorship set forth above. The issue is the hiatus between the time Colquest ceased production on October 1, 1990, and Straight Creek commenced production with a majority of former Colquest employees, about April 1, 1995, a period of 54 months. The Respondent argues that to be the hiatus and that the presence of Colquest representatives on the property following the commencement of the strike on October 1, 1990, has no bearing on the length of the hiatus since they were not engaged in production of coal but merely the preservation and maintenance of the mine. The General Counsel argues that the employees were engaged in the 46-1/2 month unfair labor practice strike the hiatus should be tolled thus reducing it to between 3-1/2 to 7-1/2 months.

In order for striking employees to be eligible for strike benefits they must be members of a local. Thus prior to the strike the UMW chartered Local 3009 for the Colquest employees so they could receive strike benefits which they did up until about a month before the strike ended. Local 3009 had no employed dues-paying members and in effect utilized the facility of a sister local located in Kentucky.

The Respondent argues that the major factor against a finding of successorship is, what it determined to be a 54-month hiatus of operations. The General Counsel and the Charging Party argues the hiatus was not more than 3-1/2 to 7-1/2 months since Colquest went out of business because of the strike and not for economic or other reasons.

The Board and courts have never found the length of hiatus prohibits the finding of legal successorship. The totality of all the circumstances surround the hiatus must be considered. The employees expectancy of hire is one that must be considered but is not always a determining factor. Stated below in a brief analysis of these factors.

Beginning with a requirement that a majority of the successor employees must have been employees of the predecessor and supervision and job responsibilities must be similar. The following is applicable to this case.

Here a significant majority of Respondent's work force is comprised of former Colquest employees (Jt. Exh. 1). In fact, other than mechanics and maintenance personnel, substantially all of Respondent's employees previously worked for Colquest at the Clairfield, Tennessee mines (G.C. Exh. 4). Respondent hired the former Colquest employees because of their superior qualifications. The former Colquest employees were some of the most highly skilled and experienced mine workers available in the area. As observed the administrative law judge in *Great Lakes Chemical Corp.*, 298 NLRB 615, 618 (1990), since the predecessor's "employees were the only trained work force in the area . . . [this] would enhance rather than diminish their expectation of [rehire]."

Additionally, five of Respondent's six supervisors held similarly supervisory positions with Colquest (Jt. Exh. 1). John Taylor, an independent mining consultant for Kopper-Glo, was Colquest's mining superintendent (Jt. Exh. 1). Dwayne England, formerly the assistant mining superintendent at Colquest, currently holds the mining superintendent position with Respondent (Jt. Exh. 1). Although Taylor's status with Kopper-Glo is independent consultant, the record evidence reflects that Taylor and England are performing the same job functions as they performed for Colquest. Taylor is at the Clairfield, Tennessee mine site almost on a daily basis. When he was employed by Colquest, Taylor worked in the administrative offices, whereas England was responsible for the mining operation. Under Respondent's operation, Taylor continues to work out of the offices on the property, while England remains responsible for overseeing the work in and around the mine. Thus, there is no difference in the responsibilities of either England or Taylor.

There are no apparent differences in the work performed by Respondent's employees compared with their previous job responsibilities at Colquest. The evidence reflects that the nature of the work is identical in all respects. Dexter Marlow, a scoop operator for Respondent, testified that he is performing the same work (with the same job title) as he did with Colquest. Respondent's wage rates are similar to those paid by Colquest's during its operation of the mines. Respondent

currently pays its hourly miners between \$11 and \$12 per hour (G.C. Exh. 4). The hourly rates paid by Colquest ranged from \$10.70 to \$11.25 per hour.

Respondent argues that some of its employees work in a different mine and under different supervision than they did during their employment with Colquest mines and therefore requires fewer supervisors and employees. These changes are simply a logical consequence of operating only one of the three underground mines. *Capitol Steel & Iron Co.*, 299 NLRB 484, 487 (1990).

Other factors relevant to successorship are location, operation, and customer. Here the operation itself remains fundamentally unchanged. Respondent is mining coal on the same property and at the same mine previously operated by Colquest. Respondent operates as a contract-miner for Kopper-Glo. Kopper-Glo as the lessee of the mineral rights at the Clairfield, Tennessee property, owns the coal mined there. All of the coal mined by Respondent is delivered to Kopper-Glo. Additionally, Kopper-Glo informs Respondent as to the amount of coal needed to fulfill its contracts. Respondent does not have any authority to make those decisions.

The Board, has held that "[c]ontinuity of customers has also been considered a factor in determining continuity in the employing industry." *Eastone of Ohio*, 277 NLRB 1652, 1653 fn. 4 (1986). However, where, as here, Respondent performs contract work, the examination of customers is not a useful factor in determining continuity of the employing entity from the perspective of the employees. The nature of a subcontractor relationship makes this variable irrelevant to the successorship equation because the customers do not have any direct relationship to the subcontractor. Rather the purchasers of the product are the customers of the contracting entity.

Under these circumstances, it would be more helpful to identify the entity which hired the contractor. From the employees' perspective, Kopper-Glo, as the contracting entity, would have a greater impact on Respondent's work than would any change in the identity of the customers who buy Kopper-Glo's coal. In all likelihood, the employees would view Kopper-Glo as Respondent's sole customer. The same would then have been true during the operations of Colquest, Kopper-Glo's previous contract-miner.

Respondent asserts that it is operating on a smaller scale than Colquest because it mines only one of the three underground mines and therefore employs fewer hourly employees and supervisors than did Colquest. Respondent, however, is still in a startup stage. At the time of hearing, Respondent's mining operations had been producing coal for less than a year. Carroll, in his capacity as coal broker, testified that he is attempting to secure additional coal contracts with previous customers on behalf of Kopper-Glo. Respondent also has represented that it plans to hire more employees. In early 1996, Carroll told his employees that if the Union would just leave him alone, he could hire more workers. There is evidence in the record to establish that in the near future Respondent will be increasing production and consequently the size of its operation.

Respondent's contention is also flawed as it compares Respondent with Colquest at the height of Colquest's operations, rather than Colquest's size at the time the strike commenced and its coal mining operation ceased. The Board

held in *Capitol Steel*, 299 NLRB at 48. ("We do not find that size-related changes are sufficient to affect the employees' perceptions of their jobs here, particularly in light of the fact that the predecessor's business had been rapidly declining in size prior to its shutdown.") Although Colquest operated three mines at the peak of its business, it had reduced its operations significantly by closing one of its three underground mines and an entire section of another prior to going out of business. By the time the employees went on strike, only Colquest 2 was operating. Respondent is mining the former Colquest 2 as Straight Creek 1. It is evident that Respondent is operating on the same scale as Colquest was at the time it ceased mining coal.

The Board in *Phoenix Pipe & Tube Co.*, 302 NLRB 122, 123 (1991), enfd. 955 F.2d 852 (3d Cir. 1991), found no merit in an employer's argument against successorship which relied on the reduced size of its operation compared with the predecessor's operation. citing *Roanwell Corp.*, 293 NLRB 20 (1989); see also *J. P. Mascaro & Sons*, 313 NLRB 385, 389 (1993) (wherein the Board quoting *HydroLines, Inc.*, 305 NLRB 416, 421 (1991), stated that "[a]n employer . . . may take over only part of the operations of the predecessor and still be deemed a successor employer"); in *Capitol Steel & Iron Co.*, 299 NLRB 487 ("[m]ere diminution in size does not defeat a successorship finding if the putative successor can be said essentially to be operating the predecessor's business in miniature"); *Lloyd Flanders*, 280 NLRB 1216, 1218-1219 (1986); *Mondovi Foods Corp.*, 235 NLRB 1080, 1082 (1978) ("[A] change in scale of operation must be extreme before it will alter a finding of successorship.").

Other factors considered are methods of production and equipment used. In view of the above analysis a lengthy discussion is not necessary. It is abundantly clear that the Respondent is operating with the same equipment as Colquest. Also that the method of mining is identical, called "continuous miner" system.

Respondent argues that its method of operations differ from those of Colquest because Four Leaf Mining, an independent strip-mine contractor for Kopper-Glo which operated on the property prior to the strike, has ceased operations. There is no evidence, however, that Four Leaf had any impact on the operations of Colquest. Therefore, Four Leaf's cessation of operations would have any impact on Respondent's operations. Moreover, Four Leaf's existence or non-existence does not have any relevance to Respondent's employees' attitude toward union representation. Such an argument by Respondent is analogous to asserting that Respondent is not a successor because the gasoline station across from the mine is no longer in business. Although the absence of Four Leaf may slightly alter Kopper-Glo's operation, it has no effect on Respondent's operation.

Indication that the successor will continue its operation may also be a factor. Here there are no indications that Respondent intends to cease operations at Straight Creek 1. During the strike Colquest installed an expensive silo and belt system for the haulage and storage of coal which is inconsistent with any intention to cease operations.

As noted above, the hiatus alone, whether it was 54 months or 3-1/2 months does not defeat Respondent's successorship. The activities of the Union during the hiatus relevant. The Union remained active for the duration of the hiatus. The local conducted biweekly meetings during the

strike. Benefits were paid to striking employees for 45-1/2 months. After the strike concluded, Freddie Wright, the deputy director of the region, continued to maintain a union presence in the area through contact with the employees and the local officials. Wright held meetings whenever an important event warranted and regularly telephoned the employees. Consequently, during the strike and thereafter, the Union was active in the affairs of the former Colquest employees. It has maintained a strong presence with regard to the Clairfield, Tennessee mines and has demonstrated a willingness to represent the employees who work there. In *Nephi Rubber Products Corp.*, 303 NLRB 151 fn. 11 (1991), enfd. 976 F.2d 1361 (10th Cir. 1992), the Board observed that during a hiatus between the operation of the predecessor and its successor, the Union continued its representation of employees by communicating with employees and through its efforts toward reopening the plant. Similarly in *CitiSteel USA*, 312 NLRB 815, 816 (1993), revd. 53 F.3d 350 (D.C. Cir. 1995), the Board, holding that a hiatus was insufficient to defeat a finding of successorship, found that the hiatus was marked by continuing activity on the part of representatives and lawyers for the international union.

Here, as set forth below there was a continuity of the employing entity.

The continuity in the employing entity is examined through the use of the aforementioned objective factors. These factors are used as a method of predicting the subjective attitudes of the employees.

The essential inquiry is whether operations as they impinge on union members, remain essentially the same after the transfer of ownership. The focus of the analysis, in other words, is not on the continuity of the business structure in general, but rather on the particular operations of the business as they affect the members of the relevant bargaining unit. "[T]he touchstone remains whether there was an 'essential' change in the business that would have affected employee attitudes toward representation."

*Nephi Rubber*, 303 NLRB at 151 (quoting *Food & Commercial Workers v. NLRB*, 768 F.2d 1463 (D.C. Cir. 1985), quoting *NLRB v. Jeffries Lithograph Co.*, 752 F.2d 459, 464 (9th Cir. 1985)). The policy reason behind the successorship doctrine is to further the primary purpose of the National Labor Relations Act itself—industrial peace.

In conducting the analysis, the Board keeps in mind the question whether "those employees who have been retained will understandably view their job situation as essentially unaltered." See *Golden State Bottling Co.*, 414 U.S. 168, 184 (1973); *NLRB v. Jeffries Lithograph Co.*, 752 F.2d 459, 464 (9th Cir. 1985). This emphasis on the employees' perspective furthers the Act's policy of industrial peace. If the employees find themselves in essentially the same jobs after the employer transition and if their legitimate expectations in continued representation by their union are thwarted, their dissatisfaction may lead to labor unrest. See *Golden State Bottling Co.*, 414 U.S. at 184.

*Fall River Dyeing Corp.*, 482 U.S. at 43-44. Accordingly, the successorship doctrine preserves industrial peace by pro-

moting stability in collective-bargaining relationships. Toward this end, once the Union was certified as the collective-bargaining representative among the predecessor's employees, Respondent's employees should not be denied the opportunity to engage in collective bargaining with the Union as their representative. Denying the employees the right to continue with their collective-bargaining representative, will likely lead to disenchantment and possibly more labor unrest.

When examining potential successorship situations, the test is "whether it may be reasonably assumed that, as a result of transitional changes [in the employing industry], the employees' desires concerning [continued union representation] is likely to have change." *Ranch-Way, Inc.*, 183 NLRB 1168 (1970). In the present case, there is no evidence to suggest that the employees no longer wish to be represented by the Union. To the contrary, the continuity in the employing entity provides strong support for a finding that the employees still wish to be represented by the Union. The argument that Respondent had a good-faith doubt of the union majority status is also without merit.

Respondent contends that even if it is the successor to Colquest, it has no duty to bargain because of its good-faith doubt as to the Union's majority status (G.C. Exh. 1(f)). Respondent, however, has failed to present any objective considerations as a basis for its good-faith doubt and counsel for the General Counsel is unaware of any evidence to support such a contention. Instead of relying on any objective evidence concerning the employees' attitudes toward representation in support of its good-faith doubt, Respondent relies on the hiatus itself. Such a position by Respondent, without any objective evidence in support thereof, is without merit.

From the foregoing it is evident that Respondent is a legal successor to Colquest and a majority of its employees were employees of Colquest, its predecessor, and the Union is the exclusive representative of the employees for purposes of collective bargaining. Respondent has a duty, on request, to bargain with the Union as such.

#### CONCLUSIONS OF LAW

1. The Respondent, Straight Creek Mining, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The unit described here is appropriate for purposes of collective bargaining.
4. By failing and refusing to, on request, recognize and bargain with the Union with respect to hours, wages, and other terms and conditions of employment, Respondent has violated Section 8(a)(1) and (5) of the Act.
5. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent, Straight Creek Mining, Inc., has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Because Respondent, Straight Creek Mining, Inc., failed and refused to recognize the Union as the exclusive representative of the employees in the unit described on its legal

successorship to Colquest Energy, Inc., with an obligation to bargain with the Union pursuant to the Union's 9(d) certification, it shall be ordered to, within 14 days of this Order, recognize and bargain with the Union and notify the Union that it will do so. It shall also be ordered to post the notice to employees as set forth and at places proscribed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>1</sup>

#### ORDER

The Respondent, Straight Creek Mining, Inc., Clairfield, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from failing and refusing to recognize and bargain with United Mine Workers of America, AFL-CIO as the exclusive representative of its employees in the following unit, which is a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

All production and maintenance employees including carrier operators, utility employees, shop employees, roof bolters, fire bosses, laborers, mechanics, tractor operators, miner operators, and maintenance employees employed at Colquest's facilities in Clairfield, Claiborne County, Tennessee, but excluding all independent truck drivers, clerical and professional personnel and supervisors as defined in the Act constituted a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

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

(a) Recognize the United Mine Workers of America, AFL-CIO within 14 days of this order as the exclusive representative of the employees in the unit described above and, on request, bargain in good faith with the Union concerning hours, wages, and other terms and conditions of employment and if an agreement is reached reduce the agreement to writing and sign it.

(b) Within 14 days after service by the Region, post at its Clairfield, Tennessee facility copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own ex-

<sup>1</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>2</sup>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."

pense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.