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Dandy Mining, Inc. and Janet Holbrook, Trustee in Bankruptcy and Local 5921, District 17, United Mine Workers of America. Case 9-CA-36076

September 17, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on June 29, 1998,¹ the Acting General Counsel of the National Labor Relations Board issued a complaint on July 13 against Dandy Mining, Inc. and Janet Holbrook, Trustee in Bankruptcy for Dandy Mining, 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 August 12, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On August 14, 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 the Region, by letter dated July 30, notified the Respondent that unless an answer were received by August 5, a Motion for Summary Judgment would be filed.

Although the Respondent is in bankruptcy, it is well established 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. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting 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, has been engaged in the mining of coal in Logan County, West Virginia, near the town of Starit, West Virginia. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its Logan County, West Virginia facility goods valued in excess of \$50,000 directly to enterprises located within the State of West Virginia, each of which, in turn, sold and shipped from their respective West Virginia facilities 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 National Bituminous Coal Wage Agreement of 1993 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about January 20, 1997, 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—the National Bituminous Coal Wage Agreement of 1993—between certain coal operators and the United Mine Workers of America on behalf of its districts and locals, including the Union, effective from January 20, 1997 through August 1, 1998, to which the Respondent has agreed to be bound. Since about January 20, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about June 1, 1998, the Respondent has failed to continue in effect all of the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of the unit employees. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing to bargain collectively and in good

¹ All subsequent dates are in 1998, unless stated otherwise.

faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of 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 has violated Section 8(a)(5) and (1) of the Act by failing, since June 1, 1998, to maintain contractually required health insurance for its unit employees and failing to pay their medical expenses, we shall order the Respondent to restore the employees' health insurance coverage and any other contractually required medical coverage and make the 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).

ORDER

The National Labor Relations Board orders that the Respondent, Dandy Mining, Inc. and Janet Holbrook, Trustee in Bankruptcy for Dandy Mining, Inc., Logan County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to continue in effect all of the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of the unit employees.

(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 health insurance coverage and any other contractually required medical coverage for the following unit employees:

The employees of the Respondent described in Article IA of the National Bituminous Coal Wage Agreement of 1993.

(b) Make the unit employees whole in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a 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 back-pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Logan County, West Virginia, copies of the attached notice marked "Appendix".² 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 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 expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 1998.

(e) 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.

Dated, Washington, D.C. September 17, 1998

Sarah M. Fox, Member

Wilma B. Liebman, Member

Peter J. Hurtgen, 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 fail to continue in effect all of the terms and conditions of the National Bituminous Coal Wage Agreement of 1993 by failing to provide appropriate medical insurance and to pay the medical expenses of our unit employees.

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 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 the health insurance coverage and any other contractually required medical coverage for the following unit employees and WE WILL make them whole, with interest:

All our employees described in Article IA of the National Bituminous Coal Wage Agreement of 1993.

DANDY MINING, INC. AND JANET HOLBROOK,
TRUSTEE IN BANKRUPTCY