William L. Arthur d/b/a Wiggles Trucking Co. *and* United Mine Workers of America, District 17, Sub-District II, AFL–CIO. Case 9–Ca–36278

June 24, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by the Union on September 21, 1998, the General Counsel of the National Labor Relations Board issued a complaint on December 31, 1998, against William L. Arthur d/b/a Wiggles Trucking Co., 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 May 20, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On May 25, 1999, 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 April 12, 1999, notified the Respondent that unless an answer were received by April 19, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietorship, with an office and place of business in Sharples, West Virginia, has been engaged in the business of hauling coal. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its operations described above, derived gross revenues in excess of $50,000 for services provided to Dal Tex, a subsidiary of Arch Coal, a nonretail enterprise located within the State of West Virginia. During the 12 months preceding issuance of the complaint, Dal Tex, in conducting its coal mining operations, sold and shipped from its Sharples, 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 1998 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Since about December 29, 1993, the Union has been the designated exclusive collective-bargaining representative of the unit employees, and since then the Respondent has recognized the Union as the representative. This recognition has been embodied in successive collective-bargaining agreements between the Respondent and the United Mine Workers of America on behalf of its locals and districts, including the Union, the most recent of which is effective from January 1, 1998, to December 31, 2002. At all times since about December 29, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about March 21, 1998, and at all times thereafter, the Respondent has ceased providing its employees with health benefits as set forth in article XX of the col-

[1] In the complaint, the General Counsel seeks an order requiring the Respondent to preserve and, on request, provide at the office designated by the Board or its agents, copies of specified records necessary to analyze the amount of backpay due under the terms of the Board's Order, including electronic copies, if such records are stored in electronic form.

We find that electronic copies of the relevant records, where such already exist, are encompassed within the Board's traditional remedial language. See generally Fed.R.Civ.P. 34 (definition of "document" includes data compilations.) See also *Bills v. Kennecott Corp.*, 108 F.R.D. 459 (D.Utah 1985) (requesting party need not accept only data that exists in traditional forms, but may discover the same information when stored in electronic form in a computer); *National Union Electric Corp. v. Matsushita Electric Industrial Co.*, 494 F. Supp. 1257 (E.D. Pa. 1980) (same). Moreover, the Respondent has not established that it would be prejudiced in any way by a requirement that it produce electronic copies of these documents. Accordingly, and to clarify any ambiguity with respect to this matter, we have provided in the Order for the production of electronic copies of the specified backpay records if they are stored in electronic form.

With respect to the General Counsel's proposed requirement that the Respondent submit copies of the necessary backpay records at the office designated by the Board or its agents, however, we find that this proceeding does not satisfactorily present the question of whether a respondent should be ordered to provide copies of its records in this manner. We accordingly decline to order the Respondent to do so in connection with this case.

lective-bargaining agreement described above, and has failed to pay certain medical claims for which it is responsible under that agreement.

These health benefits and medical claims relate to wages, hours, and other terms and conditions of employment of the unit employees, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent concerning this conduct and its effects, and without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining 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.

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 about March 21, 1998, to provide health benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement and failing to pay their medical expenses, we shall order the Respondent to honor the terms of the agreement, and to make whole its unit employees by making all contractually required health benefits payments or contributions, including any additional amounts applicable to such delinquent payments as determined pursuant to *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 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).

ORDER

The National Labor Relations Board orders that the Respondent, William L. Arthur d/b/a Wiggles Trucking Co., Sharples, West Virginia, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to bargain with United Mine Workers of America, District 17, Sub-District II, AFL–CIO, the exclusive representative of the employees of the Respondent described in article 1A of the National Bituminous Coal Wage Agreement of 1998, by failing to provide health benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement.

(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) Comply with the terms of the 1998–2002 collective-bargaining agreement by making all contractually required health benefits payments or contributions retroactive to March 21, 1998, and make whole the unit employees for any loss of benefits or expenses ensuing from its failure, since about March 21, 1998, to provide health benefits to unit employees pursuant to article XX of the agreement, as set forth in the remedy section of this Decision.

(b) 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, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Sharples, 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 March 21, 1998.

(d) 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. June 24, 1999

[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."

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 and refuse to bargain with United Mine Workers of America, District 17, Sub-District II, AFL–CIO, as the exclusive representative of our employees described in article 1A of the National Bituminous Coal Wage Agreement of 1998, by failing to provide health benefits to unit employees pursuant to article XX of the 1998–2002 collective-bargaining agreement.

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 comply with the terms of the 1998–2002 collective-bargaining agreement by making all contractually required health benefits payments or contributions retroactive to March 21, 1998, and WE WILL make whole the unit employees for any loss of benefits or expenses ensuing from our failure, since about March 21, 1998, to provide health benefits to unit employees pursuant to article XX of the agreement, with interest.

WILLIAM L. ARTHUR D/B/A WIGGLES TRUCKING CO.