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## OPINION OF TRUSTEES

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### In Re

Complainant: Pensioner  
Respondent: Employer  
ROD Case No: 07-0001 – September 19, 2007

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, and  
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

### Background Facts

Complainant was laid off from classified active employment with Respondent on December 12, 2000. Respondent's facility at which Complainant worked shut down at that time and did not re-open. Respondent was last signatory to the 1998 National Bituminous Coal Wage Agreement ("1998 Wage Agreement"). Complainant was party to a grievance against Respondent that was settled May 29, 2002. As part of the settlement, Complainant received payment from Respondent equal to seven weeks' pay and the UMWA Health & Retirement Funds was notified for the purpose of determining eligibility for pension credit.

Complainant applied for a service pension in 2001, and was awarded pension credit under the 1974 Pension Plan based on the back pay settlement. Complainant was notified by letter dated August 15, 2003 that he was awarded a Special 30-and-Out Layoff Pension under the 1974 Pension Plan effective March 1, 2002. The letter also informed the Complainant that the Respondent was designated as the last signatory employer that had employed him in a classified position, and to contact Respondent regarding eligibility for health benefits. Complainant applied to the Funds for a Health Services Card on August 25, 2006 and again was advised in a letter from the Funds dated September 7, 2006, to contact his last signatory Employer, the Respondent, regarding his eligibility for health benefits. Complainant applied for health benefits from Respondent and his application was denied by the Respondent in a letter dated February 19, 2007. Respondent declared in the letter of denial that it was not the Complainant's last signatory employer.

### Dispute

Is Respondent responsible for providing health benefits to Complainant?

### Positions of the Parties

Position of the Complainant: Respondent is the last signatory Employer of Complainant and is responsible for providing health benefits to eligible Pensioners.

Position of the Respondent: Respondent's facility shut down and did not reopen. Respondent is not the Complainant's last signatory employer, and is not required to provide Complainant's health benefits.

### Pertinent Provisions

Article XX, Section (c)(3)(i) of the 1998 NBCWA provides in pertinent part:

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners under the 1974 Pension Plan and Trust whose last signatory classified employment was with such Employer and who are not eligible to receive benefits from a plan maintained pursuant to the Coal Act.

Article XX, Section (e)(5) of the 1998 NBCWA states in pertinent part:

Disputes arising under this Agreement with regard to the Employer benefit plan established in (c)(3) above shall be referred to the Trustees. The Trustees shall develop procedures for the resolution of such disputes. In the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties.

The General Description of the Health and Retirement Benefits contained in Article XX of the 1998 NBCWA states in pertinent part:

The parties expressly agree that the language references to "for life" and "until death" that are retained in this General Description are intended to mean that each Employer will provide, for life, only the benefits of its own eligible retirees who retire during the term of this Agreement. A retiree shall be considered to be a retiree of an Employer if his last signatory classified employment was with such Employer...However, under no circumstances will an Employer be responsible to provide benefits or to contribute toward the provision of benefits, through the 1993 Benefit Trust or any other plan, trust or mechanism, to former employees and retirees (or their spouses, surviving spouses or dependents) of any other Employer beyond the term of this Agreement.

Article I of the Employer Plan states:

(5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto) whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan; or (iii) a special permanent layoff pension under the terms of Article II.E(4) of the 1074 Pension Plan, during any period prior to the person's attainment of age 55.

Article II.B. of the Employer Plan states in pertinent part:

Health benefits under Article III hereof shall be provided to Pensioners as follows:

(1) Any Pensioner who is not again employed in classified signatory employment subsequent to

(a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and

(b) December 31, 1997, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

### Discussion

Article XX(c)(3)(i) of the 1998 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Pensioners whose last signatory classified employment was with such an Employer. Article II B.(1) of the Employer Benefit Plan establishes that an individual who is receiving a pension under the 1974 Pension Plan (with certain exceptions not relevant here) is eligible for health benefits coverage under the Employer Benefit Plan. The Complainant is a Pensioner under Article I (5) of the Plan, and thus meets the eligibility requirements to receive health benefits from his last signatory Employer.

The 1974 Pension Trust has identified the Respondent as the Complainant's last signatory Employer. The Respondent disagrees that it is the Complainant's last signatory Employer and sets forth numerous arguments in support of its position. However, issues regarding pension

eligibility, which include designation of last signatory Employer, are issues for the Trustees of the 1974 Pension Trust. These issues are handled in a separate procedure authorized by Article XX (g) of the Wage Agreement, and may not be addressed in the ROD process. The Respondent's status was addressed under the aforementioned procedure, and the Respondent's designation as such was confirmed.

Opinion of the Trustees

Consistent with the terms of the Employer Benefit Plan, Respondent, as Complainant's last signatory Employer, is required to provide health benefits for the Complainant.