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## OPINION OF TRUSTEES

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### In Re

Complainant: Laid-off Employees  
Respondent: Employer  
ROD Case No: 11-0059

Trustees: Michael H. Holland, Daniel L. Fassio, Kurt A. Salvatori, and  
Marty D. Hudson

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

Respondent notified the UMWA on February 2, 2012, as required by the Worker Adjustment and Retraining Notification (“WARN”) Act, of its decision to close the mine and preparation plant in which Complainants worked and to lay off Complainants beginning on April 3, 2012. Complainants last worked for Respondent on February 2, 2012, but, to comply with the WARN Act, Respondent paid Complainants their full wages for the 60 days after the UMWA received the notice of the layoffs on February 2, 2012. Respondent laid off Complainants on or after April 3, 2012.

In May 2012, Respondent informed Complainants that Complainants’ health benefits would continue through April 30, 2013, unless Complainants elected and paid for COBRA coverage. Respondent subsequently informed Complainants on February 20, 2013, that Complainants’ health benefits would expire on February 28, 2013, unless Complainants elected COBRA coverage, and that the notice Respondent sent in May 2012 incorrectly stated the expiration date of Complainants’ health benefits.

Complainants claim that they should receive continued health benefits coverage until April 30, 2013, because Respondent laid them off on or after April 3, 2012.

### Dispute

Is Respondent required to provide continued health benefits coverage to Complainants until April 30, 2013?

Positions of the Parties

Position of the Complainants: Respondent is required to provide health benefits to Complainants until April 30, 2013, because Respondent laid them off on or after April 3, 2012.

Position of the Respondent: Respondent is required to provide health benefits to each Complainant through February 28, 2013.

Pertinent Provisions

Article III.D(1)(a) of the Employer Benefit Plan states:

ARTICLE III. BENEFITS

D. General Provisions

(1) Continuation of Coverage

(a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment insurance coverage is as follows:

<u>Number of Hours Worked for the Employer in 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked</u>	<u>Continuation of Coverage</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

### Discussion

Article III.D(1)(a) of the Employer Benefit Plan requires an Employer to provide health benefits to a laid-off Employee for a period measured from the laid-off Employee's date last worked. The Employer Benefit Plan does not define the term "date last worked," but, in ROD 88-129, the Trustees concluded that the term should be given its literal meaning. Consequently, the Trustees held in ROD 84-721 that a discharged Employee's date last worked was the last date she actually worked for her Employer in a classified position and not the subsequent date on which she was discharged.

Nevertheless, the Trustees have decided that a laid-off Employee's date last worked may be a date for which the Employee received back pay even if such date is subsequent to the last date the Employee actually worked for the Employer (See RODs 81-466 and 84-403). Given that employers are liable for back pay to certain employees for violating the WARN Act, the Funds treats payments employers make to their employees for violating, or to settle possible violations of, the WARN Act as back pay for pension credit purposes.

Respondent notified the UMWA of the layoffs on February 2, 2012, and paid Complainants their full wages for the 60-day period thereafter to avoid violating, or making payments under, the WARN Act. Inasmuch as Respondent did not pay Complainants during this 60-day period for violating, or to settle possible violations of, the WARN Act, Respondent's payments to Complainants during this 60-day period are not back pay. Given that Complainants did not receive back pay, they are only entitled to continued health benefits from Respondent for a period of time based on the last date on which they actually worked for Respondent in a classified position.

### Opinion of the Trustees

Respondent is required to provide continued health benefits to Complainants for a period of time based on the last date on which they actually worked for Respondent in a classified position.

Respondent is required to provide health benefits through February 28, 2013, to those Complainants who last worked for Respondent in February 2012 and who worked at least 2,000 hours for Respondent during the 24-month period immediately prior to their respective dates last worked.