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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 262, May 24, 1982

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee;  
Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of exemptions granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health coverage for an Employee, during several periods of disability, by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

### Background Facts

The Employee had been employed by the Employer as a classified Employee for several years. He became ill on February 28, 1980, and was unable to work for 7-1/2 months. During the 24-month period prior to February 28, 1980, his last date worked, he had worked 2,235.50 hours. The Employer provided him with health coverage during the entire period he was off work.

The Employee returned to work on October 12, 1980, and worked until February 2, 1981, when he became disabled. He was off work for approximately four months. During the period from October 1980 until February 2, 1981, the Employee worked 329.00 hours. During the 24-month period prior to February 2, 1981, however, the Employee worked a total of 1,479.00 hours. The Employer provided the Employee with 13 weeks of sickness and accident benefits because of his disability and 30 days of health coverage. The Employer refused to provide additional health coverage on the basis that the Employee's previous period of disability, in 1980, had used up his hours worked prior to that time. Therefore, the Employer claimed, only the hours the Employee worked between October 1980 and February 1981 should be counted in determining his eligibility for health coverage when he became disabled on February 2, 1981.

The Employee returned to work on June 10, 1981, and worked until August 23, 1981, when he permanently ceased work because of disability. During the period from June 10, 1981, until August 23, 1981, the Employee worked 104.00 hours. During the 24-month period prior to August 23, 1981, however, the Employee worked a total of 972.00 hours. The Employer provided him with 30 days of health benefits. The Employer again stated that during the Employee's previous periods of disability, he had used up the hours he worked prior to those periods and, therefore, only the hours the Employee worked between June 10, 1981, and August

23, 1981, should be counted in determining his eligibility for health coverage after August 23, 1981.

The Employee states that he has accumulated more than \$5,000 in health services charges which should be paid by the Employer.

Dispute

For what periods was the Employer responsible for providing continuation of coverage during the Employee's disability following his last work dates on February 2, 1981, and August 23, 1981?

Positions of the Parties

Position of Employee: The Employee feels that the Employer did not provide him with benefits coverage for as long a period as required by the Employer's Benefit Plan.

Position of Employer: The Employer feels that, during each period of disability, the Employee used up the hours he worked in the 24-months prior to such disability periods and that to include these same hours for subsequent disability periods would result in double coverage for the Employee.

Pertinent Provisions

Article III, Section E.(1) of the Employer's Benefit Plan, as amended in 1978, which provides:

- E. General Provisions
  - (1) Continuation of Coverage
    - (a) Layoff

If an Employee ceases work because of layoff, continuation of health, vision care, life and accidental death and dismemberment insurance coverages are as follows:

Number of Hours Worked For The Employer In The 24 Calendar Month Period Prior to The <u>Date Last Worked</u>	Continuation from the <u>Date Last Worked</u>	Period of Coverage
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2,000 or more hours	Balance of month plus	12 months
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500 or more hours but less than 2,000 hours	Balance of month plus 6 months	
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Less than 500 hours	30 days	
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(b) Disability

Except as otherwise provided in Article II, Section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, vision care, life and accidental death and dismemberment insurance coverages while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in the schedule in (a) above.

Article III, Section D.(1) of the Employer's Benefit Plan, as amended in 1981, which provides:

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 coverages is as follows:

Number of Hours Worked For The Employer In The 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked	Continuation from the Date Last Worked
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

(b) Disability

Except as otherwise provided in Article II, Section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment insurance coverage while disabled for the greater of (i) the period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in the schedule in (a) above.

Article III, Section E(2) of the Employer's Benefit Plan, as adopted in 1978, which provides:

(2) Advanced Insurance Premiums

In the event of an economic strike at the expiration of the 1978 Bituminous Coal Wage Agreement, the Employer will advance the premiums for its health, vision care, and life and accidental death and dismemberment insurance coverage for the first 30 days of

such strike. Such advanced premiums shall be repaid to the Employer by such Employees through a check-off deduction upon their return to work. Should such a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

#### Discussion

Under Article III.E.(1) of the Employer's Benefit Plan, as adopted in 1978, and Article III.D.(1) of that Plan, as amended in 1981, an Employee who is unable to work because of disability is eligible for continuation of health coverage for the period he is receiving sickness and accident benefits or for a period based on previous hours worked, whichever is longer. An Employee is eligible for the balance of the month plus 12 months of coverage if he has worked at least 2,000 hours for the Employer during the 24 calendar month period prior to his last date worked, the balance of the month plus six months of coverage if he has worked more than 500, but less than 2,000 hours, and 30 days of coverage if he has worked less than 500 hours.

The Employer's Plan does not permit the Employer to reduce the total amount of an Employee's "hours worked for the Employer in the 24 calendar month period" to reflect periods of continuation of coverage that may have been provided during that period. Instead, under the explicit terms of Article III.E.(1) of the Employer's Plan, as adopted in 1978, and Article III.D.(1) of that Plan, as amended in 1981, an Employee's eligibility for continuation of coverage is based on the total number of hours worked for the Employer during the 24-calendar month period prior to his last date worked.

In this case, therefore, the Employee was eligible for additional continuation of coverage beyond the amounts provided by the Employer during the Employee's second and third periods of disability. The Employee worked 1,479.00 hours for the Employer during the 24 calendar month period prior to February 2, 1981, the beginning of his second period of disability. Therefore, under Article III.E.(1) of the Employer's Plan, as adopted in 1978, he was eligible for continuation of coverage for the remainder of February 1981, plus six months. Because that Plan terminated on March 27, 1981, however, and the economic strike followed, the Employer was actually required to provide continuation of coverage through March 27, 1981, and then, under Article III.E.(2) of the Plan, to advance the Employee's premium for the first 30 days of the strike period.

The Employee worked 972.00 hours for the Employer during the 24 calendar month period prior to August 23, 1981, the beginning of his third period of disability. Therefore, under Article III.D.(1) of the Employer's Plan, as amended in 1981, he was eligible for continuation of coverage for the remainder of August plus six months. Consequently, the Employer should have provided the Employee with continuation of coverage through February 1982.

#### Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for providing the Employee and his dependents with continuation of coverage from February 2, 1981, through March 27, 1981, and from August 23, 1981, through February 28, 1982, and for advancing the Employee's

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insurance premium for the first 30 days of the economic strike which commenced on March 27, 1981.