

OPINION OF TRUSTEES

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In Re

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Complainants: Former Employees  
Respondent: Employer  
ROD Case No: 81-205, June 28, 1983

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 ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits coverage for the Pensioners by the Employer under the terms of the Employer's Benefit Plan and hereby render their opinion on the matter.

Background Facts

The Complainants are three UMWA 1974 Plan Pensioners, one receiving an age-62 pension and the other two receiving age-55 pensions for 22-3/4 and 26-1/4 years of service. The Complainants' last signatory classified employment was with the Employer. The Complainants have not worked since that time. One of the Complainants met the eligibility requirements of Article II C of the Employer's Benefit Plan from the date he last worked for the Employer until his pension was approved effective March 1, 1983. The other two Complainants have been pensioners since at least October 1981, The Employer last received income from the sale of coal on October 30, 1981, and informed its laid-off and retired Employees that it was out of business. Benefits coverage was provided by the Employer through December 31, 1981.

Upon being advised that benefits coverage would be terminated on December 31, 1981, the Complainants applied for benefits coverage from the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Plan"). The Employer completed an "Out-of-Business" letter for the Funds and, as a consequence, health services benefits were authorized effective January 1, 1982.

However, after the records of the Employer were audited by the Funds, it was concluded that although the Employer was currently dormant, it is still a going concern which does not meet the requirements of Articles II A and II E 4 of the 1974 Benefit Plan as being "no longer in business". Therefore, the Complainants' benefits coverage was canceled.

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Dispute

Is the Employer or the 1974 Benefit Plan responsible for the provision of benefits coverage for the Complainants?

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Positions of the Parties

Position of the Complainants: They want to know who is responsible for the provision of benefits coverage for them.

Position of Employer: Benefits coverage was provided during the period that it was mining coal.

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Pertinent Provisions

Article XX, Section (c)(3)(i)(ii) of the National Bituminous Coal Wage Agreement of 1981 provides:

Section (c) 1974 Plans and Trusts

(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. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successor and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment has with a signatory Employer which is no longer in business. For purposes of determining

eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trusts shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service, or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this section.

Article II, A, B and E of the 1974 Benefit Plan provides:

#### ARTICLE II: ELIGIBILITY

The following persons are eligible to receive the health benefits pursuant to Article III for the period from March 27, 1981, through the expiration date of the 1981 Wage Agreement.

##### A. Pensioners

- (1) Health and death benefits under Article III hereof shall be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer, (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business (as determined pursuant to Article II F of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers no longer in business before June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 Wage Agreement that are no longer in business after June 6, 1981) provided that (i) such Pensioner is not receiving 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, or (ii) such Pensioner is

not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner

- (a) who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, or
- (b) whose last day of credited service under the 1974 Pension Plan was on or before December 5, 1977 and as of such last day of credited service:
  - (i) was eligible for a deferred vested pension based on twenty (20) or more years of credited service, or
  - (ii) had attained age 55 and was eligible for an age 55 retirement pension as defined in the 1974 Pension Plan,

and as of March 26, 1981, was receiving or had applied and was age and service eligible for, a pension under the 1974 Pension Plan to commence no later than April 1, 1981, and was not eligible as of March 26, 1981, for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits, subject to all other provisions of this Plan.

- (2) Any person who has been covered as a Pensioner under this Plan, and is again employed in classified signatory employment after June 7, 1981, with an Employer, shall have coverage under the Plan suspended during such period of employment. If such person is credited with at least three or more years of service under the 1974 Pension Plan after June 7, 1981, while so employed with the same Employer, coverage shall be terminated under this Plan.
- (3) Health Benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least \$500 per month.

B. Disabled Employees

In addition to disabled Pensioners who are receiving pension benefits and are therefore entitled to receive health benefits under paragraph A of this Article II, health benefits under Article III shall also be provided to any Employee who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) for whom such Employee last worked as a classified Employee is no longer in business (as determined pursuant to Article II G of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers

no longer in business before June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 Wage Agreement that are no longer in business after June 6, 1981) and who:

- (1) (a) Has completed 20 years of credited service, including the required number of years of signatory service pursuant to Article IV C(6) of the 1974 Pension Plan or any corresponding paragraph of any successor thereto, and
- (b) has not attained age 55, and
- (c) became disabled after December 6, 1974 while in classified employment with such Employer, and
- (d) is eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor;
- (2) Becomes totally disabled due to a compensable disability while in classified employment with such Employer within four years of the date he would be eligible to receive a pension under the 1974 Pension Plan or any successor thereto, as long as he continues to be so disabled and during the period for which Workers' Compensation payments (Workers' Compensation does not include Federal Black Lung Benefits) are applicable; or
- (3) Is eligible to receive Sickness and Accident Benefits pursuant to the Wage Agreement,

E. Non-Retired Miners on Lay-Off

Effective March 1, 1980, a non-retired miner who is on layoff status and who otherwise is eligible for health and other non-pension benefits under the health plan maintained by the Employer by which he is laid off, as required and limited by, the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, but who does not receive such benefits because his Employer is no longer in business and, because of financial inability, has failed to provide such benefits, is eligible to receive such benefits under the 1974 Benefit Plan and Trust, as amended, provided, however, that:

4. The Trustees of the 1974 Benefit Plan and Trust shall determine, within the limitations described in subpara-graphs a and b, below, when an employer is "no longer in business," as that term is used in this section E and Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable. The term "no longer in business" describes those employers

signatory to the 1978 or 1981 Wage Agreement, whichever is applicable, which:

- a. have ceased all mining operations and have ceased employing persons under the 1978 or 1981 Wage Agreement, whichever is applicable, with no reasonable expectation that such operations will start up again; and
- b. are financially unable (through either the business entity that has ceased operations as described in subparagraph a, above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the 1978 or 1981 Wage Agreement, whichever is applicable, or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable.

Article I. (1), (4) and (5) of the Employer Benefit Plan provides:

#### Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (company name).
- (2) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.
- (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, or (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.

Article II. B. (1), (a) and (b), C (1) (a), (b), (e) and (d) of the Employer Benefit Plan provides:

#### Article II - Eligibility

The persons eligible to receive the health benefits pursuant to Article III are as follows:

- B. Pensioners

Health benefits and life insurance 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) June 7, 1981, 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.

C. Disabled Employees

In addition to disabled Pensioners who are receiving pension benefits and are therefore entitled to receive health benefits under paragraph B of this Article II, health benefits under Article III shall also be provided to any Employee who.

1. (a) Has completed 20 years of credited service, including the required number of years of signatory service pursuant to Article IV C (6) of the 1974 Pension Plan or any corresponding paragraph of any successor thereto, and

(b) has not attained age 55, and

(c) became disabled after December 6, 1974 while in classified employment with the Employer, and

(d) is eligible for Social Security Disability Insurance Benefits under Title II of the Social Security Act or its successor.

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Discussion

The 1974 Benefit Plan provides coverage to certain pensioners and disabled Employees, but only if their last signatory Employer is no longer in business within the meaning of Article II. E. 4 of that Plan. Based upon an audit of the Employer's records, the Funds has determined that the Employer is not out of business within the meaning of Article II. E. 4. Therefore, the 1974 Benefit Plan is not responsible for the Complainants' benefits coverage.

Under Article XX, Section (c)(3)(i) of the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, benefits coverage for eligible individuals is guaranteed during the term of the Agreement. The Complainants are UMWA 1974 Pension Plan pensioners, who are eligible

for benefits under Article II, B. of the Employer's Benefit Plan as long as they satisfy the criteria therein. One of the Complainants was a disabled Employee who was eligible for benefits coverage under Article II. C. of the Employer's Benefit Plan while he is disabled.

Because Article XX, Section (c)(3)(i) of the 1981 Wage Agreement guarantees this coverage during the term of the Agreement and because the Employer is not out of business, the Employer is still responsible for providing the Complainants' benefits coverage through the term of the 1981 Wage Agreement.

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Opinion of the Trustees

The Trustees are of the opinion that the Employer is responsible for the provision of benefits coverage for the Complainants and their eligible dependents retroactive to the date that it terminated benefits coverage on December 31, 1981.