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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-418 - March 26, 1984

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 an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute. The dispute concerns the provision of benefits coverage for an Employee, based on all hours worked, by the Employer under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter.

### Background Facts

The Respondent is a trucking company which depends largely on hauling jobs from one particular coal company. Inasmuch as coal production had been reduced by the coal company, the Respondent laid off all but four of its truck drivers. Due to the fluctuation of coal production, however, the Respondent offered its senior Employees temporary recall to work from its idle panel.

The Complainant's employment with the Respondent began July 1, 1974. He was employed on a regular basis until he was laid off on November 10, 1982. The Complainant returned to work on a "temporary recall" basis on January 31, 1983. The Respondent advised him that the work was temporary and no benefits other than wages and overtime would be paid. The Complainant was also advised that he would be provided with benefits coverage for each month during which he worked after his continuation of coverage, based on his hours worked during the 24 consecutive calendar month period prior to November 10, 1982, terminated.

Each time that work was offered, the Respondent gave the Complainant the option of working or refusing to work, without jeopardy to his benefits coverage, unemployment benefits or panel rights. The Complainant claims to have agreed to the recall under protest of the conditional terms.

Funds' records show that 601 hours were reported for the Complainant by the Respondent while he was on temporary recall during the period January 31, 1983, through September 28, 1983. He worked a total of 2,218 hours during the period January 1, 1982, through September 28, 1983. The Respondent provided benefits coverage for the Complainant through December 31, 1983.

The Respondent submitted a copy of an Arbitrator's Opinion to which the Complainant was a party, wherein the Arbitrator decided the Complainant was not eligible for a clothing allowance for the year 1983 because his recall to work was of a temporary nature. The Respondent claims that the issue of temporary employment should not be considered by the Trustees.

### Dispute

Is the Respondent responsible for the provision of continuation of coverage for the Complainant based on all of the Complainant's hours worked during the 24 consecutive calendar month period immediately prior to his date last worked?

### Positions of the Parties

Position of the Complainant: He is entitled to continuation of coverage based on all hours worked during the period January 1, 1982, through September 28, 1983, which the Respondent has not provided.

Position of the Respondent: The Complainant was provided with health benefits coverage, as defined in the Employer's Benefit Plan, and his coverage was extended based on the number of hours he worked in regular employment during the 24 consecutive calendar month period immediately prior to his date last worked. It is the position of the Respondent's representative that the issue is, one of the recognition of an Employer's right to define terms of temporary employment, which was previously decided in this case by an arbitrator under the grievance procedures defined in Article XXIII.

### Pertinent Provisions

Article I (1), (2) and (4) of the Employer's Benefit Plan provide:

#### Article - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (name of company).
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, as amended from time to time and any successor agreement....

- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article II A. (1) of the Employer's Benefit Plan provides:

Article II - Eligibility

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

A. Active Employees

Benefits under Article III shall be provided to any Employee who:

1. is actively at work for the Employer on the effective date of the Wage Agreement.

Article III D. (1) (a) of the Employer's Benefit Plan provides:

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:

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

### Discussion

The Respondent has claimed that the conditions of temporary recall under which the Complainant resumed his employment were clearly defined in advance and that his refusal to accept temporary recall under these conditions would not have adversely affected his panel rights. The Respondent's representative has claimed the main issue is one of recognition of an Employer's right to recall Employees in temporary employment and that this right has already been upheld in this case by a coal field arbitrator.

In deciding the issues presented in this dispute, the Trustees have considered the fact that the Respondent specified the terms of this "temporary" employment to the Complainant before such employment was accepted. It was also noted that these terms differed from the terms of employment specified in the National Bituminous Coal Wage Agreement of 1981 and that these differences extended to the provisions of Article XX of that Agreement. Lastly, they considered the fact that the Complainant did accept employment with the Respondent in full knowledge of the conditions as explained by the Respondent.

Nevertheless, the Trustees are aware of the position of the UMWA as the exclusive bargaining agent of the Employees, and that the terms of the agreement cannot be modified or abrogated through unilateral actions by the Employer, even with the consent of its Employees, in the absence of a clear participation and consent by their bargaining representative. Therefore, although they recognize that an arbitrator has addressed a question of the Complainant's right to payment of a clothing allowance related to this period of employment, the Trustees are not bound by that decision but rather are obligated to review the separate issue of provision of health benefits coverage under Article XX, which is properly within their jurisdiction, within the context of that Agreement.

Article III D. (1) (a) provides that continuation of coverage is based on the number of hours worked by an Employee during the 24 consecutive calendar month period immediately prior to the Employee's date last worked. There is no provision in the Employer's Benefit Plan which specifies that hours worked are to be counted only for "scheduled days" of work. Also, there is no provision which excludes hours worked during a temporary recall.

The Complainant's date last worked was September 28, 1983. He had worked 2,218 hours during the 24 consecutive calendar month period immediately prior to that date. Therefore, under Article III D. (1)(a), he is eligible for continued benefits coverage through September 30, 1984.

### Opinion of the Trustees

The Respondent is responsible for the provision of continuation of coverage for the Complainant through September 30, 1984, providing he continues to meet all requirements of eligibility.

