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## OPINION OF TRUSTEES

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### In Re

Complainant: Employees  
Respondent: Employer  
ROD Case No: 81-466 - February 12, 1985

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 concerning the application of back-pay awards as "hours worked" to determine the period of continuation of benefits coverage for laid-off Employees by the Employer under the terms of the Employer's Benefit Plan. The Trustees hereby render their opinion on the matter.

### Background Facts

The Complainants had worked for the Respondent in its repair shop through April 16, 1983; their date of lay-off. The Respondent provided continuation of coverage through April 30, 1984, for those Complainants who had worked more than 2,000 hours during the 24 consecutive calendar month period immediately prior to their date last worked.

On July 15, 1983, the Respondent sold one of its loading machines to an independent repair shop. This machine was hauled to the independent shop on September 8, 1983. On December 8, 1983, the Respondent bought a loading machine from the same shop. The Complainants, 25 Employees of the Respondent, filed a grievance. In their grievance, the Complainants contended that the machines were one and the same and that the Respondent used the sell and buy procedure to circumvent the provisions of the National Bituminous Coal Wage Agreement of 1981, wherein the Complainants would have been recalled from the panel to repair the machine. An Arbitrator ruled that the Respondent should determine which Complainants were qualified to perform the repair work, and should pay each such individual three and one half (3-1/2) shifts. The Respondent paid all but one of 25 Complainants for three and one-half (3 1/2) shifts. (One grievant was found to be a truck driver who did not meet the qualification for payment as set forth by the Arbitrator.) Information submitted by the Complainants' Representative indicates that the 3-1/2 shifts were recorded by the Kentucky Department of Unemployment Compensation as having been worked on December 9, 12, 13 and 14, 1983.

### Dispute

Is the Respondent responsible for the provision of benefits coverage for the Complainants based on the back pay award and, if so, for which period?

Position of the Parties

Position of the Complainants: The Complainants ask how much additional coverage they are due and the dates such coverage commences and terminates.

Position of the Respondent: The Complainants were provided continuation of coverage up to the maximum provided by the Plan, commencing with their date last worked.

Pertinent Provisions

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

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (coal 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) () 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:

<u>Number of Hours Worked for the Employer in the 24 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Worked</u>	<u>Period of Coverage Continuation from the Date Last Worked</u>
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

Article III D. requires the Employer to provide continuation of coverage for laid-off Employees based on hours worked during the 24 consecutive calendar month period immediately prior to the Employees' date last worked. The Trustees have previously determined that back pay awards are to be treated as hours worked and credited for benefit eligibility determination purposes as time spent in the performance of classified duties.

An Arbitrator has ruled that qualified grievants are entitled to be paid for three and one-half (3 1/2) shifts for the loss of work on the repair of the loading machine. The Employer paid 24 of the grievants for three and one-half (3 1/2) shifts. The Kentucky Department of Unemployment Compensation has designated December 9, 12, 13 and 14, 1983, as the dates for which the back pay was received.

The Respondent is responsible for the provision of benefits coverage for the Complainants who received a back pay award, beginning December 9, 1983 and continuing for a period based on their hours worked during the 24 consecutive calendar month period immediately prior to December 15, 1983.

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The Respondent is responsible for the provision of benefits coverage for the twenty-four Complainants who received a back pay award from December 9, 1983 and continuing for a period based on their hours worked during the 24 consecutive calendar month period immediately prior to December 15, 1983.