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## OPINION OF TRUSTEES

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### In Re

Complaint: Employee  
Respondent: Employer  
ROD Case Nos: 81-525, 81-526, 81-530 - June 5, 1985

Board of Trustees: Joseph Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce Jr., 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 to the laid off employees of these employers, and hereby render their opinion on the matter.

### Background Facts

The Complainants in these cases last worked in classified employment for G.M.& W. Coal Company ("G.M.& W."), Penn Pocahontas Coal Company ("Penn Pocahontas") or Marmon Coal Company ("Marmon"). All three companies were signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981.

On September 28, 1984, two days before expiration of the 1981 Wage Agreement, G.M.& W. and Penn Pocahontas laid off all their classified employees not already on layoff. G.M.& W. and Penn Pocahontas did not sign the 1984 Wage Agreement. Based on the evidence submitted to the Trustees, the employees of G.M.& W. and Penn Pocahontas did not engage in an economic strike after September 30, 1984, nor did the parties reach an impasse in bargaining. Operations have not resumed at these companies since September 30, 1984; the employees are still on layoff; and neither company has signed the 1984 Wage Agreement.

Shortly before the expiration of the 1981 Wage Agreement, G.M.& W. and Penn Pocahontas each notified its employees of its position that the 1981 Wage Agreement did not require it to continue their benefits coverage beyond September 30, 1984. Each stated that it would voluntarily advance insurance premiums until December 31, 1984, if a new Wage Agreement were not reached, and that the method of repayment would be determined through collective bargaining. G.M.& W. and Penn Pocahontas last provided coverage to the laid off employees on December 31, 1984. On October 1, and November 14, 1984, and February 21,

1985, the laid off employees of these respondents filed requests for an opinion, asking the Trustees whether it was proper for their Employers to terminate their benefits coverage.

Unlike the other two employers, on November 29, 1984, Marmon signed a Memorandum of Agreement extending the terms of the 1981 Wage Agreement until January 31, 1985. On or before the expiration of this Agreement, Marmon laid off all its employees who were not already on layoff. Marmon's employees did not engage in an economic strike after January 31, 1985, nor did the parties reach an impasse in bargaining. Marmon has not resumed its operations. To date, Marmon has not signed the 1984 Wage Agreement.

Shortly before September 30, 1984, Marmon also notified its employees of its position that the 1981 Wage Agreement did not require it to continue their benefits coverage beyond September 30, 1984. Marmon also stated that, if a new Wage Agreement were not reached, it would advance insurance premiums until December 31, 1984, and that the method of repayment would be determined through collective bargaining. Following its agreement to extend the 1981 Wage Agreement, Marmon continued benefits coverage for its laid off employees through February 28, 1985, but has not provided coverage since then. On October 1, 1984, and February 21, 1985, Marmon's laid off employees filed requests for an opinion, asking the Trustees whether it was proper for Marmon to terminate their benefits coverage.

### Dispute

Was it proper for the Respondents, who are not signatory to the 1984 Wage Agreement, to terminate their laid off employees' benefits coverage under the facts of these cases?

### Position of the Parties

Position of the Complainants: The Respondents are responsible for providing laid off employees with benefits coverage for a period of time based on the continuation of coverage schedule set forth in Article III.D. (1) (a) of the 1981 Employer Benefit Plans.

Position of the Respondent: The Complainants are not entitled to continued benefits coverage beyond the expiration of the 1981 Wage Agreement.

### Pertinent Provisions

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

(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.

Article II-A of the 1981 Employer Benefit Plans provides:

" 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; or

(2) is on layoff or disabled from the Employer and had continuing eligibility as of the effective date of the Wage Agreement for coverage under the 1978 Employer's Benefit Plan ("prior Plan") as a laid off or disabled employee. Coverage for such laid-off or disabled Employees shall not continue beyond the date when they would no longer have been eligible for such coverage under the provisions of the prior Plan.

(3) Except as provided in paragraph (2) above, any Employee of the Employer who is not actively at work for the Employer on the effective date of the Wage Agreement will not be eligible for coverage under the Plan until he returns to active employment with the Employer.

Any Employee of the Employer who as of March 26, 1981, was eligible for benefits under the prior Plan who is not scheduled to work within two weeks after the effective date of the Wage Agreement because of lack of work, such an Employee will, for purposes of this Plan, be considered eligible for coverage under this Plan as of the effective date of the Wage Agreement but as an Employee on layoff as of such date.

(4) A new Employee will be eligible for health benefits from the first day worked with the Employer."

Article III.D. (1) (a) of the 1981 Employer Benefit Plans 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 coverage is as follows:

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

On September 30, 1984, the expiration date specified in the 1981 Wage Agreement, and on January 31, 1985, the expiration date specified in the Memorandum of Agreement between Marmon and the UMW, the terms and conditions of employment applicable to the Respondents' laid off employees were those set forth in the 1981 Wage Agreement and the 1981 Employer Benefit Plan, which is incorporated by reference into the Wage Agreement. The Respondents' employees, in each instance presented here, were laid off prior to the respective termination dates. There was no agreement by the UMW, which represents the Respondents' employees, and the Respondents that would allow the Respondents to stop providing benefits coverage to the laid off employees.

Based on these facts and the plain and clear meaning of Article II.A and Article III.D. (1) (a) of the Plan, the Trustees conclude that the Respondents' unilateral termination of the Complainants' benefits coverage was improper. Therefore, on the basis of the record before the Trustees, the Respondents are required to provide the Complainants with benefits coverage for the period set forth in Art. III.D. (1) (a) of the 1981 Employer Benefit Plan.

Opinion of the Trustees

The Respondents are responsible for providing the Complainants with benefits coverage for the period set forth in Art. III.D. (1) (a) of the 1981 Employer Benefit Plan.

