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OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 81-631 - August 11, 1987

Board of Trustees: Joseph P. 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 health benefits coverage for an Employee under the terms of the Employer Benefit Plan.

Background Facts

The Complainant worked for the Respondent in a classified job from January 1984 to October 19, 1984. The Respondent was an independent contractor for United Pocahontas Coal Company. The Respondent and United Pocahontas were signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, which expired on September 30, 1984. At the beginning of October 1984, United Pocahontas was engaged in negotiations with the UMWA for a successor agreement. Through a verbal agreement with the Union, United Pocahontas agreed to provide coverage during negotiations as long as work ensued and no strike occurred. A representative of United Pocahontas has stated that the Respondent was included in that agreement. The Respondent claims that it never entered into any verbal agreement to extend the terms of the 1981 Wage Agreement beyond September 30, 1984. On October 19, 1984, the Union called a selective economic strike against United Pocahontas and its contractors, including the Respondent. The Respondent ceased operations as of that date and did not sign the 1984 Wage Agreement.

The representative for the Complainant maintains that the Complainant continued working for the Respondent after the expiration of the 1981 Wage Agreement because he believed there was a verbal extension of the terms of that Agreement. The Complainant claims that he and the other Employees of the Respondent were told by the Respondent that "everything would remain the same," even though the Respondent had not signed the 1984 Agreement. The Complainant was paid the standard wage rate for his classification for work performed in October 1984, and his

hours worked during that month were reported to the Funds by the Respondent as required under the terms of the Wage Agreement.

The Complainant has submitted unpaid bills for medical services performed between October 8, 1984 and October 13, 1984. The Complainant contends that the Respondent is responsible for the provision of his health benefits coverage as an active Employee during that period. The Complainant asks whether the Respondent is responsible for payment of his unpaid medical bills. In the alternative, the Complainant asks whether the UMWA 1974 Benefit Plan and Trust is responsible for his health benefits during that period.

The Respondent has stated that it did not terminate the Complainant's health benefits coverage. The Respondent believed that such coverage had been continued during October 1984 because premium payments had been deducted from each remittance check issued to it by United Pocahontas through November 8, 1984. The Respondent was later informed by United Pocahontas and the Complainant that the Complainant's coverage had been cancelled as of September 30, 1984 because United Pocahontas did not submit the premium payments to the insurance carrier. The Respondent has refused to accept responsibility for payment of the Complainant's claims and suggests that liability be assigned to United Pocahontas.

#### Dispute

Is the Respondent responsible for providing health benefits to the Complainant as an Employee beyond September 30, 1984?

#### Positions of the Parties

Position of the Complainant: The Complainant asks whether the Respondent is responsible for the provision of his health benefits coverage as an Employee beyond September 30, 1984.

Position of the Respondent: The Respondent maintains that as an independent contractor of United Pocahontas, health benefits coverage for its Employees was handled by United Pocahontas. Therefore, United Pocahontas is responsible for providing health benefits coverage for the Complainant after September 30, 1984.

#### Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 1981 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 terms 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 I (1), (2) and (4) of the Employer Benefit Plan provide:

#### Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (Employer's Name).
- (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. (4) of the Employer Benefit Plan provides:

#### Article II - Eligibility

##### A. Active Employees

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

Article III D. (2) of the Employer Benefit Plan provides:

#### Article III - Benefits

##### D. General Provisions

##### (2) Advanced Insurance Premiums

In the event of an economic strike at the expiration of the 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 checkoff deduction upon their return to work. Should a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

#### Discussion

Article XX (c)(3)(i) of the 1981 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits to its classified Employees. The Wage Agreement stipulates that benefits provided by the Employer pursuant to such Plan shall be guaranteed during the term of the Agreement.

The issue here is whether the Respondent is responsible for providing health benefits coverage for the Complainant beyond the expiration of the 1981 Wage Agreement when the Respondent did not sign the 1984 Wage Agreement. Benefits provided to Employees and their dependents are established through collective bargaining and may not be unilaterally changed by an Employer during contract negotiations at the expiration of a wage agreement, so long as the Employees continue working and no impasse has been reached, and no strike has occurred. In the event of an economic strike at the expiration of the Wage Agreement, Article III D. (2) of the Employer Benefit Plan requires the Employer to advance the Employees' insurance premiums for the first 30 days of such strike.

Although the Respondent has stated that there was no agreement to extend the terms of the 1981 Wage Agreement beyond September 30, 1984, such statement contradicts the evidence on record which indicates that the Respondent continued to abide by the terms of the Wage Agreement beyond September 30, 1984. The Respondent continued to pay the wage rates established under the Wage Agreement, it continued to report hours worked to the Funds, and it did not take any measures to terminate the Complainant's health benefits coverage. Furthermore, the Complainant and United Pocahontas have each alleged that there was a verbal agreement to extend the terms of the 1981 Wage Agreement during negotiations, as long as work ensued and no strike occurred. Inasmuch as the Complainant continued working for the Respondent under the terms of the 1981 Wage Agreement until the strike occurred on October 19, 1984, the Respondent is responsible for advancing the premiums for such coverage for the first 30 days of such strike. Any arrangement for the provision of health benefits made by the Respondent with United Pocahontas does not relieve the Respondent of its primary responsibility to provide coverage to the Complainant under the terms of the Wage Agreement.

#### Opinion of the Trustees

The Respondent is responsible for the Complainant's health benefits coverage for the first 30 days of an economic strike.