

OPINION OF TRUSTEES

In Re

Complainant: Laid-off Employees
Respondent: Employer
ROD Case No: 84-384 - August 25, 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 benefits coverage for laid-off Employees under the terms of the Employer Benefit Plan.

Background Facts

The Complainants were employed by the Respondent on its brush cutting crew. Information submitted to the Funds indicates that the Respondent has employed such a crew for over twenty (20) years and that employees assigned to that crew were considered salaried (exempt) employees and not members of the bargaining unit represented by the United Mine Workers of America (UMWA). In July 1986, following an organization campaign conducted by the Union, an election was held and the brush cutting crew voted to join the UMWA.

On December 15, 1986, the crew was integrated into the bargaining unit. As of that date, the Complainants' positions were classified as Laborers-Unskilled under the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1984, and they began receiving the wages and benefits specified in that Agreement.

On December 20, 1986, the Complainants were laid off. The Respondent provided continued benefits coverage for the Complainants for thirty (30) days, from December 20, 1986 through January 20, 1987. The representative for the Complainants contends that the Complainants are entitled to continued health benefits coverage beyond January 20, 1987, based on their hours worked for the Respondent in the 24-month period prior to layoff, including hours worked prior to classification of their positions under the Wage Agreement. The representative argues that because the Complainants actually performed the same duties before and after their jobs were classified on December 15, 1986, they were in effect performing classified work prior to the date. Thus, the Complainant's representative contends that no distinction should be made between hours worked as non-classified employees and hours worked as classified Employees in determining their eligibility for continued benefits coverage. In support of this position, the

representative has submitted a copy of an arbitration award dated April 28, 1987, in which it was established that the Respondent violated the Wage Agreement and prior practice and custom when it laid off members of the brush cutting crew on December 20, 1986, while contractors were retained to clear land for the company. The Arbitrator ruled that clearing land is the historic work of the brush cutting crew and cannot be unilaterally eliminated in favor of outside contractors.

The Respondent has stated that it provided continued benefits coverage for the Complainants for thirty days, from December 20, 1986 through January 20, 1987, based on the fact that each of the Complainants worked less than 500 hours as a classified Employee between December 15, 1986 and December 20, 1986. The Respondent contends that it is not responsible for providing coverage beyond January 20, 1987. The Respondent cites a decision of the U.S. Court of Appeals for the Fourth Circuit which reversed the lower court's ruling and affirmed a decision of the Funds' Trustees to deny pension credit for periods of employment prior to employees membership in the collective bargaining unit represented by the UMWA. The Respondent contends that this decision establishes that employees are not performing "classified work" for benefits purposes until such time as they become members of a bargaining unit represented by the UMWA.

There is no evidence of any National Labor Relations Board (NLRB) action directing that the Respondent's brush cutting crew should have been included in the bargaining unit prior to the Union's organization campaign and the NLRB-certified election in July 1986.

Dispute

Whether the Complainants are entitled to continued benefits coverage beyond January 20, 1987.

Positions of the Parties

Position of the Complainants: The Complainants are entitled to continued benefits coverage beyond January 20, 1987, based upon their hours worked for the Respondent during the 24-month period prior to layoff, including hours worked as non-classified Employees.

Position of the Respondent: Based on their hours worked as classified Employees, the Complainants are entitled to continued health benefits coverage through January 20, 1987.

Pertinent Provisions

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 1984, 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

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

A. Active Employees

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

Article II D. (1) (a) of the Employer 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:

Number of Hours Worked for
the Employer in the 24
Consecutive Calendar Month
Period Immediately Prior to
the Employee's Date
Last Worked

Period of Coverage
Continuation from the
Date Last Worked

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. (1)(a) of the Employer Benefit Plan provides continued benefits coverage for a laid-off Employee for a defined period based upon the number of hours worked for the Employer in the 24-month period prior to layoff. Article I (4) of the Plan defines "Employee" as "a person working in a classified job for the Employer." Therefore, in calculating a period of coverage continuation, the "number of hours worked" by such an Employee is, by definition, the number of hours worked in a classified job.

Although the Complainants in this case performed the same work before and after their positions were classified under the Wage Agreement, there is no evidence that the Complainants were considered classified Employees, subject to the terms and conditions of employment set forth in the 1984 Wage Agreement, prior to December 15, 1986. While the arbitration award cited by the Complainants' representative upholds the Complainants' historic work jurisdiction, it does not establish that work performed by the Complainants prior to their integration into the bargaining unit should be considered classified work for benefits purposes. In fact, it is clearly stated in the "Factual Background" section of the decision that prior to the election in July 1986, the employees assigned to the Respondent's brush cutting crew were considered as salaried (exempt) employees.

Inasmuch as the Complainants were first recognized by the parties to the Wage Agreement as classified Employees on December 15, 1986 and were laid off on December 20, 1986, their eligibility for continued benefits coverage must be calculated on the number of hours worked for the Respondent between December 15, 1986 and December 20, 1986. . During that period, each of the Complainants worked less than 500 hours; therefore, they are entitled to continued benefits coverage for 30 days from the date last worked in accordance with Article III D. (1)(a). Inasmuch as the Respondent provided continued benefits coverage for the Complainants through January 20, 1987, it has fulfilled its obligation under the terms of the Employer Benefit Plan.

Opinion of the Trustees

The Respondent is not responsible for providing continued benefits coverage for the Complainants beyond January 20, 1987.