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## OPINION OF TRUSTEES

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### In Re

Complainant: Laid-off Employee  
Respondent: Employer  
ROD Case No: 88-143 - November 17, 1989

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, 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 continued benefits coverage for a laid-off Employee under the terms of the Employer Benefit Plan.

### Background Facts

R & B Mining became signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1984, on April 6, 1987. The Complainant worked in a classified position for R & B Mining, Inc. from April 1987 until December 1987, when the company ceased operations.

In January 1988, the Respondent, Bern Fuels, began operations at the mine site where the Complainant had worked for R & B Mining. Bern Fuels is owned by the owner of R & B Mining, and it employed miners who had worked for R & B Mining, including the Complainant. Bern Fuels became signatory to the 1988 Wage Agreement on February 4, 1988. The Complainant worked in a classified position for Bern Fuels from January 1988 until June 30, 1988, when he was laid off.

The Complainant states that the Respondent provided health benefits coverage for him as a laid-off Employee through March 31, 1989, based on hours worked for Bern Fuels. He contends that his period of eligibility for continued coverage should be based on hours worked for Bern Fuels combined with hours worked for R & B Mining, Inc.

### Dispute

Whether the Respondent is required to provide continued health benefits coverage for the Complainant as a laid-off Employee based on hours worked for Bern Fuels combined with hours worked for R & B Mining.

#### Positions of the Parties

Position of the Complainant: R & B Mining and Bern Fuels are the same Employer. Therefore, the Complainants period of eligibility for continued health benefits coverage should be determined by combining the hours worked for both companies.

Position of the Respondent: The Respondent has not replied to repeated correspondence from Funds' staff requesting its position in this dispute.

#### 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 1988, 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. (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 health benefits coverage for a laid-off Employee based on the number of hours worked for the Employer during the 24-month period immediately prior to the date last worked. In this case, the Complainant received a period of coverage continuation based on his hours worked for Bern Fuels. The Complainant, however, claims that his hours worked for Bern Fuels should be combined with his hours worked for R & B Mining in order to determine his period of coverage continuation.

An Employee's work hours for separate Employers may not be combined to determine an Employee's period of coverage continuation. However, in ROD 81-426 (copy enclosed herein), the Trustees determined that hours worked at companies found to be the same Employer can be combined to determine an Employee's period of coverage continuation.

In this case, R & B Mining and Bern Fuels operated as signatory Employers under the same ownership, at the same mine site, using the same equipment and employees. Therefore, as R & B and Bern Fuels may reasonably be considered the same Employer, hours worked at Bern Fuels may be combined with hours worked at R & B Mining for the purpose of determining the period of coverage continuation. During the 24-month period prior to the date the Complainant last worked for Bern Fuels, he had worked 616 hours for Bern Fuels and 1,576 hours for R & B

Mining. The Complainant is therefore entitled to continuation of coverage for the balance of the month in which he last worked, June 1988, plus 12 months.

Opinion of the Trustees

The Respondent, Bern Fuels, is required to provide continued benefits coverage for the Complainant from July 1, 1988 through June 30, 1989, consistent with the terms of the Wage Agreement and the Employer Benefit Plan.