
OPINION OF TRUSTEES

In Re

Complainants: Laid-off, Disabled and Locked out Employees
Respondents: Three Employers
ROD Case No: 88-711- February 25, 2003

Trustees: A. Frank Dunham, Michael H. Holland, Marty D. Hudson and
Elliot A. Segal.

The Trustees have reviewed the facts and circumstances of this dispute concerning the provision of benefits under the terms of the Employer Benefit Plan.

Background Facts

The Complainants are laid-off, disabled and locked out Employees who last worked in classified positions for the three Respondents. The Respondents were signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988, which expired on February 1, 1993, and have not signed the 1993 Wage Agreement.

Prior to February 1, 1993, several of the Complainants were inactive Employees as a result of a layoff or a disability. On February 1, 1993, the Respondents "locked out" those Complainants who were active Employees, at 11:59 p.m. The Respondents advised the active Employees by a posted notice that they were not to report for work and that they would receive notice by mail regarding their entitlement to continued health benefits coverage at their own expense under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

The Respondents terminated the Complainants' health benefits coverage effective February 2, 1993. The Respondents contend that at the expiration of the 1988 Wage Agreement they were not required to provide health coverage for the Complainants.

Dispute

Are the Respondents required to provide health benefits coverage for the Complainants beyond February 1, 1993?

Positions of the Parties

Position of the Complainants: The Respondents are required to provide health benefits coverage for the Complainants beyond February 1, 1993, during their individual periods of eligibility as laid off, disabled and locked out Employees.

Position of the Respondents: Because the issue raised by the Complainants occurred after the expiration of the 1988 Wage Agreement, it is not an "appropriate subject for the Trustees to resolve . . ." The Respondents are not required to provide health benefits coverage for the Complainants beyond February 1, 1993 because continuation of benefits depends on the existence of an agreement.

Pertinent Provisions

Article XX(c)(3)(i) of the National Bituminous Coal Wage Agreement of 1988 provides in pertinent part:

(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 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 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 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 III D. (1) (a) and (b) of the Employer Benefit Plan provide:

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

(b) Disability

Except as otherwise provided in Article II, Section C, if an Employee ceases work because of disability, the Employee will be eligible to continue health, life and accidental death and dismemberment insurance coverage while disabled for the greater of (i) the

period of eligibility for Sickness and Accident benefits, or (ii) the period as set forth in the schedule in (a) above.

Discussion

The Respondents contend that the Trustees do not have the authority to resolve this dispute because the issue raised by the Complainants occurred after the expiration of the Wage Agreement. Article XX Section (e)(6) of the National Bituminous Coal Wage Agreement of 1988 authorizes the Trustees to resolve disputes arising under that Agreement with regard to the Employer Benefit Plan. As the issue raised by the Complainants concerns their entitlement to benefits coverage and that entitlement is governed by the terms of the Employer Benefit Plan, the Trustees may resolve this dispute consistent with their authority under Article XX Section (e)(6) of the Wage Agreement.

Article XX Section (c)(3)(i) of the 1988 Wage Agreement requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits to its Employees. The issue here is whether the Respondents are contractually obligated to provide such coverage to its laid-off, disabled and locked out Employees beyond the expiration of the 1988 Wage Agreement when the Respondents did not sign the 1993 Wage Agreement.

The Trustees have previously decided in RODs 81-586, 81-648, 84-629, 84-681 and 84-683 (copies enclosed herein) that active Employees who were laid off prior to the expiration of the Wage Agreement are entitled to the period of health benefits coverage specified by the Wage Agreement. Similarly, in ROD 81-648, the Trustees found that "... disabled Employees who are otherwise eligible for continued coverage under Article III. D. (1)(b) are entitled to the period of continued coverage specified in the Employer Benefit Plan, as are laid-off Employees." Accordingly, the Complainants who were laid-off and disabled Employees prior to February 1, 1993 are entitled to health benefits coverage as provided by the Plan.

With regard to the Complainants who were locked out by the Respondents on or after 11:59 p.m. on February 1, 1993, they are not entitled to a period of health coverage. The National Labor Relations Board has acknowledged that a lockout by an employer results in the layoff of Employees. See American Ship Bldg. Co. v. NLRB, 380 U.S. 300, 306 (1965) (citing Quaker State Oil Refining Corp., 121 NLRB 334 (1958)). Accordingly, the Complainants who were active Employees on February 1, 1993, at 11:59 p.m. and subsequently were locked out by the Respondents after the expiration of the 1988 Wage Agreement are essentially laid off Employees. The Trustees previously determined in ROD 84-470 (copy enclosed herein) that Employees who were laid off after the expiration of a wage agreement are not entitled to health coverage.

Opinion of the Trustees

The Respondents are required to provide continued health benefits coverage for the Complainants who were laid off prior to the expiration of the 1988 Wage Agreement during their individual periods of eligibility as set forth in Article III D. (1)(a) and for the Complainants who were disabled prior to the expiration of the 1988 Wage Agreement during their individual periods of eligibility as set forth in Article III D. (1)(b). The Respondents are not required to provide continued health benefits for the Complainants who were locked out after the expiration of the 1988 Wage Agreement.