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OPINION OF TRUSTEES

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In Re

Complainants: Laid-off and Disabled Employees

Respondent: Employer

ROD Case No: 88-748 - January 8, 1997

Trustees: Thomas F. Connors, Michael H. Holland, Marty D. Hudson and Robert T. Wallace.

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 were employed in classified positions with the Respondent until they were laid off or ceased working due to disability. The Respondent was signatory to the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1988 which expired on February 1, 1993. On February 2, 1993, the Respondent was struck by the United Mine Workers of America ("UMWA"). The Respondent advanced 30-day premiums for health insurance coverage for the Complainants.

On March 2, 1993, the UMWA reached an agreement with the Bituminous Coal Operators' Association ("BCOA") to extend the terms of the 1988 Wage Agreement from February 2, 1993, through May 3, 1993. On March 3, 1993, active Employees returned to work for the Respondent, a BCOA member, and worked through May 3, 1993. The Respondent resumed health benefits coverage for the Complainants beginning March 3, 1993.

Subsequent to May 3, 1993, the UMWA selectively struck the Respondent at several mine locations. The Respondent has terminated benefits for its laid-off and disabled Employees from the mine locations affected by a strike.

Dispute

Is the Respondent required to provide continued health benefits coverage for laid-off and disabled Employees beyond the expiration of the Wage Agreement, during a strike period?

Positions of the Parties

Position of the Complainants: The Respondent is required to provide continuation of health benefits coverage for laid-off and disabled Employees during a strike period because the benefits are deferred compensation to which the Complainants are entitled regardless of the strike activity by the active Employees.

Position of the Respondent: The Respondent is only required to advance insurance premiums for the first 30 days of the strike; the Respondent is not required to provide health benefits coverage for the Complainants during the remainder of the strike.

#### Pertinent Provisions

Article XX(c)(3)(i) of the 1988 National Bituminous Coal 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 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),(b) and (2) of the Employer Benefit Plan 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:

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

(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.

(2) Advanced Insurance Premiums

In the event of an economic strike at the expiration of the 1988 Bituminous Coal 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 check-off deduction upon

their return to work. Should a strike continue beyond 30 days, the Union or such Employees may elect to pay premiums themselves.

Opinion of the Trustees

The Trustees deadlocked on this matter. Trustees Holland and Hudson found for the Complainants. Trustees Connors and Wallace found for the Respondent. Under the ROD procedures adopted pursuant to the 1993 NBCWA, the matter was referred to a neutral interest arbitrator, Thomas Tomczyk, for resolution. The arbitrator was directed to choose one of the two draft opinions proposed by the Trustees. The arbitrator's choice is printed below as the opinion of the Trustees.

Decision of the Arbitrator

"The Respondent is only required to advance insurance premiums for laid-off and disabled Employees for the first 30 days of an economic strike, and is not obligated to provide those individuals with continued coverage at the Employer's expense."