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OPINION OF TRUSTEES

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In Re

Complainant: Pensioners  
Respondent: Employer  
ROD Case No: 93-112 - February 9, 2005

Trustees: Micheal W. Buckner, A. Frank Dunham, Michael H. Holland, 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 three Pensioners who were awarded the following pensions under the 1974 Pension Plan: Age 55 effective February 1, 1997; Deferred Vested Special effective February 1, 2000; and Deferred Vested-Enhanced effective October 1, 2002. Upon receiving their pension awards, the Complainants' last signatory employer was identified as Callahan Creek Coal Co. ("Callahan Creek"). The Complainants were advised by letter to contact Callahan Creek regarding their eligibility for health benefits coverage as Pensioners. When Callahan Creek failed to provide the Complainants with health coverage, they applied for coverage under the UMWA 1993 Benefit Plan. In a separate administrative procedure, the issue of whether Callahan Creek retirees met the eligibility requirements of the 1993 Benefit Plan was reviewed by an arbitrator. The arbitrator found that Callahan Creek was never signatory to the 1993 National Bituminous Coal Wage Agreement ("NBCWA"), and thus, the Complainants were not eligible for health benefits from the 1993 Benefit Plan.

As a result of the arbitrator's opinion, the Complainants' pension credit that was awarded for classified employment with Callahan Creek was removed from their credit histories, and the Complainants' respective last dates of credited service changed to July 31, 1995, August 13, 1995, and July 30, 1995. The Complainants again were advised to contact their last signatory employers concerning their eligibility for health benefits. Pine Branch Mining Co. ("Pine Branch"), a wholly-owned subsidiary of the Respondent, was identified as the last signatory employer for the pensioner who last worked on July 31, 1995, and the Respondent was identified as the last signatory employer for the pensioners who last worked on August 13, 1995, and July 30, 1995.

The Respondent was signatory to the Independent Bituminous Coal Bargaining Alliance ("IBCBA") of 1993, which adopted the standard 1993 NBCWA and was effective December 16, 1993. Pine Branch was signatory to a Memorandum of Agreement with the UMWA effective December 16, 1993. Both agreements terminated on July 31, 1998. The Respondent's IBCBA

agreement adopted “the same terms and conditions as contained in the successor NBCWA between the BCOA and UMWA,” except for new provisions not contained in the standard agreement that addressed Employment Security, Medical Benefits, and the Labor Management Positive Change Process. There were no modifications or exceptions to the NBCWA provisions relating to the resolution of disputes under the Employer benefit plan. The Respondent contributed to the UMWA-BCOA ROD Trust (“ROD Trust”).

In addition to the Respondent and Callahan Creek, Stonega Mining and Processing (“Stonega”) also operated at the mine from which the Complainants retired. Stonega signed an agreement with the UMWA effective May 17, 1996, through August 1, 1998, which bound Stonega to the 1993 IBCBA as a successor to the Respondent. This agreement states that:

Stonega and the Union (hereafter “the Parties”) agree that, except as provided below, the terms of the Parties’ Agreement shall be the same as those set forth in the 1993 Wage Agreement between the Union and [Respondent] (hereafter “[Respondent] Agreement”) which previously applied to the operations. In the event of any conflict or ambiguity between this Agreement and the [Respondent] Agreement, the provisions in this Agreement shall control.

The Respondent submitted a copy of a Successor Acknowledgment signed by a UMWA official, but not dated, which states that Stonega “has acquired from [the Respondent] certain operations which are subject to the collective bargaining agreement effective as of December 16, 1993 . . . . The UMWA . . . releases [the Respondent] from all obligations of [Respondent] under the [Respondent]-UMWA Agreement with respect to the operations transferred from [Respondent] to [Stonega].” Also submitted was a letter dated May 20, 1996, to the Respondent signed by Stonega’s president which confirmed that Stonega “has executed a Successor UMWA Agreement which satisfies [the Respondent’s] successorship obligation . . . .”

According to a Funds’ audit of Callahan Creek, Stonega and Callahan Creek took over one of the Respondent’s mine and preparation plants. Although Stonega’s appendix to its Wage Agreement lists Callahan Creek Coal as Stonega’s mine, employees who worked at the mine were paid by Callahan Creek, and employees who worked at the preparation plant were paid by Stonega. Callahan Creek operated the mine from October 10, 1996, to January 28, 1997. Stonega began plant operations on January 29, 1997. Four former Callahan Creek employees (who are not Complainants in this ROD) went to work for Stonega. Operations ceased in February 2000. Subsequently, an employee was hired to perform reclamation in May 2000 and worked until June 2001. Callahan Creek did not transfer any assets to Stonega. No successor company was identified for Callahan Creek and the audit found that Stonega and Callahan were separate corporate entities, with a degree of common ownership. A Funds’ audit of Stonega likewise revealed no successor company to its operations.

A single individual owns Callahan Creek and that same individual also owned one-third of Stonega until January 2000, when he sold his Stonega stock. As of January 2000, a separate individual owned 100% of Stonega. The owner of Callahan Creek is listed as an officer of Stonega.

According to the Respondent, in addition to having overlapping ownership and directors, Stonega and Callahan Creek had the same address and telephone number. Additionally, the Respondent states that Callahan Creek hired the UMWA employees that Stonega had contracted to hire and then made contributions to the Funds pursuant to the Stonega Wage Agreement. Furthermore, the Respondent states that Callahan Creek used the effective date of Stonega's Wage Agreement as its own when it terminated its relationship with the UMWA. Also, Callahan Creek referred to itself as the Respondent's successor even though Stonega was the entity that succeeded the Respondent. Finally, the Respondent states that the Division of Mined Land Reclamation issued a permit to Stonega on August 15, 1996 for the mine site at which the Respondent had operated, and that Stonega continuously held this permit until March 14, 2000. According to the Respondent, it did not find public record of a permit issued to Callahan Creek.

#### Dispute

Is the Respondent required to provide health benefits coverage for the Complainants as Pensioners?

#### Positions of the Parties

Position of the Complainants: The Respondent is required to provide coverage to the Complainants because the Respondent is the Complainants' last signatory employer.

Position of the Respondent: The Respondent is not required to provide health benefits to the Complainants because Callahan Creek is the alter ego of, or single employer with, Stonega, a signatory employer. In support of its argument, the Respondent states that Stonega and Callahan Creek had some overlapping ownership and directors, as well as the same address and telephone number, and that Callahan Creek hired UMWA employees that Stonega had contracted to hire and made contributions to the Funds pursuant to the Stonega Wage Agreement. Additionally, the Respondent refers to a letter from the owner of Callahan Creek sent to the UMWA in July 1998 that states that Callahan Creek signed a contract on May 17, 1996 and became the successor to the Respondent. The Respondent notes, however, that Stonega was the Respondent's successor, not Callahan Creek. Based on these facts, the Respondent argues that Callahan Creek is the alter ego of, or single employer with, Stonega, and consequently, Stonega must provide health benefits coverage to the Complainants as their last signatory employer.

In the alternative, the Respondent argues that Stonega is responsible for health benefits coverage because Callahan Creek was Stonega's successor and Stonega failed to pass successorship

obligations to Callahan Creek, which was required by the Stonega Wage Agreement. Because Stonega transferred operations to Callahan Creek without requiring Callahan Creek to become a successor, Stonega remains liable for providing health benefits coverage to the Complainants.

Finally, the Respondent states that it “is not conceding that it is subject to the ROD process, which is incorporated into a collective bargaining agreement to which [the Respondent’s name] is not a party.”

#### Pertinent Provisions

Article XX Section (c)(3)(i) of the 1993 NBCWA states 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 and who are not eligible to receive benefits from a plan maintained pursuant to the Coal Act.

Article XX Section (e) (5) of the National Bituminous Coal Wage Agreement of 1993 provides in pertinent part:

Disputes arising under this Agreement with regard to the Employer benefit plan established in (c) (3) above shall be referred to the Trustees. The Trustees shall develop procedures for the resolution of such disputes. In the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties.

Article XX, “General Description of the Health and Retirement Benefits” of the 1993 Wage Agreement states in pertinent part:

The parties expressly agree that the language references to “for life” and “until death” that are retained in this General Description are intended to mean that each Employer will provide, for life, only the benefits of its own eligible retirees who retired between February 1, 1993 and the Effective Date, or who retire during the term of this Agreement. A retiree shall be considered to be a retiree of an Employer if his last signatory classified employment was with such Employer. The benefits and benefit levels provided by an Employer under its Employer Plan are established for the term of this Agreement only, and may be jointly amended or modified in any manner at any time after the expiration or termination of this Agreement.

Article I (2), (4) and (5) of the 1993 Employer Benefit Plan provides:

#### ARTICLE I DEFINITIONS

The following terms shall have the meanings herein set forth:

- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1993, 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.
- (5) "Pensioner" shall mean any person who is receiving a pension, other than (i) a deferred vested pension based on less than 20 years of credited service, or (ii) a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, under the 1974 Pension Plan (or any successor thereto), whose last classified signatory employment was with the Employer, subject to the provisions of Article II B of this Plan. "Pensioner" shall not mean any individual entitled to benefits under section 9711 of the Internal Revenue Code of 1986, as amended by the Coal Industry Retiree Health Benefit Act of 1992.

Article II B. (1) provides:

#### ARTICLE II ELIGIBILITY

##### B. Pensioners

Health benefits under Article III hereof shall be provided to Pensioners as follows:

- (1) Any Pensioner who is not again employed in classified signatory employment subsequent to
  - (a) such Pensioner's initial date of retirement under the 1974 Pension Plan, and
  - (b) February 1, 1993, shall be eligible for coverage as a Pensioner under, and subject to all other provisions of this Plan. Notwithstanding (i) and (ii) of the definition of Pensioner in Article I (5) of this Plan, any such Pensioner who was eligible for

benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, shall be eligible for such benefits, subject to all other provisions of this Plan.

Article III A. (10) (b) provides in pertinent part:

#### ARTICLE III HEALTH

##### A. Health Benefits

###### (10) General Provisions

###### (b) Administration

The Trustees of the UMWA Health and Retirement Funds will resolve any disputes, including excessive fee disputes, to assure consistent Application of the Plan provision under the 1993 NBCWA. . . . In the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties.

Article V C. of the 1993 Employer Benefit Plan provides:

#### ARTICLE V AMENDMENT AND TERMINATION

C. Special Rule for Certain Pensioners. The Employer will provide, for life, only the benefits of its own eligible Pensioners who retired between February 1, 1993 and December 16, 1993, or who retire during the term of the 1993 NBCWA. The benefits and benefit levels provided by the Employer under this Plan are established for the term of the 1993 NBCWA only, and may be jointly amended or modified in any manner at any time after the expiration or termination of the 1993 NBCWA.

### Discussion

The Respondent has raised a question concerning the Trustees' authority to decide this dispute. Specifically, the Respondent states that it "is not conceding that it is subject to the ROD process, which is incorporated into a collective bargaining agreement to which [the Respondent's name] is not a party." According to the Respondent's IBCBA agreement, it adopted "the same terms and conditions as contained in the successor NBCWA between the BCOA and UMWA," except for new provisions not contained in the standard agreement that addressed Employment Security, Medical Benefits, and the Labor Management Positive Change Process. There were no modifications or exceptions to the NBCWA provisions relating to the resolution of disputes under the Employer benefit plan.

The Trustees have jurisdiction to review disputes that involve companies that are contributors to the ROD Trust. The Administrative Services Agreement between the UMWA 1974 Pension Trust and the ROD Trust specifies the administrative services provided by the Trustees of the UMWA 1993 Benefit Plan for the ROD Trust. It states that "[t]he RODs covered by this Agreement include only those submitted by employees (or covered retirees) of employers participating in the ROD Trust." Thus, the Trustees have jurisdiction to review this dispute because the Complainants were employees of an employer participating in the ROD Trust.

Furthermore, Article XX, Section (c) (3) (i) of the 1993 Wage Agreement establishes that an Employer will maintain an Employee benefit plan to provide health and other non-pension benefits for its pensioners whose last signatory classified employment was with such Employer. Section (e) (5) of the same article specifically states that disputes arising under the Employer Benefit Plan "established in (c) (3) above shall be referred to the Trustees." It further states that "[i]n the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties." Article III A. (10) (b) of the Employer Benefit Plan also states that "The Trustees of the UMWA Health and Retirement Funds will resolve any disputes . . . to assure consistent Application of the Plan provision under the 1993 NBCWA. . . . In the event the Trustees decide such dispute, such decision of the Trustees shall be final and binding on the parties." The issue raised by the Complainants concerns their entitlement to benefits coverage and that entitlement is governed by the terms of the 1993 Employer's Benefit Plan. The Respondent participates in the ROD Trust; therefore, the Trustees' have the authority to decide this case.

Article XX(c)(3)(i) of the 1993 NBCWA requires a signatory Employer to establish and maintain an Employer Benefit Plan to provide health and other non-pension benefits for its Pensioners whose last signatory classified employment was with such Employer. Article II B. of the 1993 Employer Benefit Plan states that health benefits coverage shall be provided to individuals who are Pensioners under the 1974 Pension Plan. Article I (5) of the Plan defines a

“Pensioner” as

any person who is receiving a pension under the 1974 Pension Plan (with certain exceptions not relevant here) whose last classified employment was with the Employer. The Complainants satisfied the definition of “Pensioner” as set forth in Article I (5) of the Plan as of February 1, 1997, February 1, 2000, and October 1, 2002, respectively. Therefore, the Complainants meet the eligibility requirements of Article II B. (1) and are entitled to health benefits coverage from their last signatory employer.

When an arbitrator’s decision interpreting the 1993 Benefit Plan found that Callahan Creek was not signatory to the 1993 Wage Agreement, pension credit under the 1974 Pension Plan was removed from the Complainants’ credit histories. Consequently, Pine Branch, a subsidiary of the Respondent, and the Respondent were identified as the Complainants’ last signatory employers. The Respondent argues that Stonega, not the Respondent, is the Complainants’ last signatory employer because Stonega is an alter ego of, or single employer with, Callahan Creek. However, the evidence submitted in support of this argument fails to establish that such a relationship exists. The Funds has audited both Callahan Creek and Stonega and the Trustees have never determined that the companies are alter egos or single employers. Rather, the Callahan Creek audit found that Stonega and Callahan Creek are separate corporate entities, with a degree of common ownership. The extent of the common ownership between the companies is not sufficient to support a finding of alter ego or single employer. The remaining evidence, which consists of the companies’ sharing the same address, telephone number, and alleged signatory date, and a failure of Callahan Creek to obtain a permit to operate at the mine site, is also not sufficient to prove an alter ego or single employer relationship.

The Respondent cited RODs 88-143, 84-523, 81-426, and 81-303 to support its position that Callahan Creek and Stonega were alter egos or single employers. In each of these RODs, the Trustees reviewed a particular set of circumstances concerning two employers and determined that based on those particular set of circumstances, the two employers were either alter egos or the same employer. The facts of the present case, however, do not support a similar finding. And while these RODs set forth precedent for the Trustees’ ability to review disputes for an alter ego or single employer finding, they do not require the Trustees to make such a finding.

The Respondent’s second argument is that even if Stonega and Callahan Creek are not alter egos or a single employer, Stonega is liable for the Complainants’ health benefit coverage because Callahan Creek was the successor to Stonega and Stonega failed to properly pass successorship obligations to Callahan Creek when it transferred its operations. Thus, Stonega remained liable for its successor’s obligations under the Wage Agreement. This argument hinges on the basic assumption that Stonega actually transferred its operations to Callahan Creek. However, the Trustees have no documentation that such a transfer occurred, and a previous audit of Stonega conducted by the Funds did not identify a successor. Instead, the facts establish that although Stonega signed a collective bargaining agreement in 1996, it did not begin operations until 1997, after Callahan Creek ceased operating.



Under the heading “General Description of the Health and Retirement Benefits,” Article XX of the 1993 Wage Agreement provides that “each Employer will provide, for life, only the benefits of its own eligible retirees . . . who retire during the term of this Agreement.” Article V C. of the 1993 Benefit Plan also states that the Employer will provide for life only benefits of its own eligible Pensioners who “retire during the term of the 1993 NBCWA.” According to Article I B. of the 1974 Pension Plan, “retirement shall be considered to occur on the last day of credited service . . . provided that on such day [the participant] was eligible for an immediate or deferred pension under this Plan.”

The Complainant whose last date of credited service was on July 31, 1995, retired during the term of the 1993 NBCWA. The Complainant was eligible for an immediate or deferred pension under the 1974 Pension Plan on his last day of credited service. According to Funds’ records Pine Branch was identified as this Complainant’s last signatory employer. Therefore, under Article XX, Section (c) (3) (i) of the 1993 Wage Agreement Pine Branch is responsible for this Complainant’s health benefits coverage.

The Complainants whose last dates of credited service were on August 13, 1995, and July 30, 1995, also retired during the term of the 1993 NBCWA. Both Complainants were eligible for an immediate or deferred pension under the 1974 Pension Plan on their last day of credited service. The Respondent was identified as these Complainants’ last signatory employer. Therefore, these Complainants are eligible Pensioners of the Respondent and the Respondent is required to provide health benefits coverage for them.

#### Opinion of the Trustees

The Respondent is required to provide health benefits coverage for the Complainants whose last dates of credited service were on August 13, 1995, and July 30, 1995.