

World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession and James D. Beachem, Case 6-CA-12603

February 27, 1980

DECISION AND ORDER

BY MEMBERS JENKINS, PENELLO, AND TRUESDALE

Upon a charge filed on July 27, 1979, by James D. Beachem, an Individual, herein called Beachem, and duly served on World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession, herein collectively called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 6, issued a complaint and notice of hearing on November 20, 1979, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Thereafter, the attorney representing Respondent in bankruptcy court sent a letter to the Regional Director, dated November 27, 1979. The letter contends that Respondent is a debtor-in-possession and that section 362 of the National Bankruptcy Act prohibits the commencement or continuation of judicial or administrative process against a debtor for activities prior to the filing date for relief in bankruptcy court; here October 31, 1979.

On December 19, 1979, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment based on Respondent's failure to file an answer as required by Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended. Subsequently, on December 31, 1979, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On January 8, 1980, Respondent filed a response to the Notice To Show Cause. Thereafter, on January 16, 1980, counsel for the General Counsel filed a memorandum in opposition to Respondent's reply statement to the Notice To Show Cause.

¹ On December 12, 1979, Respondent's bankruptcy attorney provided the Regional Office with the complaint filed in bankruptcy court. By return letter dated December 13, 1979, the deputy regional attorney expressed the view

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless an answer was filed to the complaint within 10 days from the service thereof, "all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the Motion for Summary Judgment, the Acting Regional Attorney, by letter dated December 7, 1979, informed Respondent of its obligation to file an answer, which was already past due, and further informed Respondent that unless an answer was received immediately, a Motion for Summary Judgment would be filed. By letter dated December 10, 1979, an attorney representing Respondent referred the Regional Office to the November 27, 1979, letter from Respondent's bankruptcy attorney and stated that it did not intend to file any further response at that time.¹ No answer to the complaint has been received to date from Respondent.

In its response to the Notice To Show Cause, Respondent states that it does not contemplate appearing in front of the National Labor Relations Board in the instant matter but, instead, intends to continue to pursue its claim in bankruptcy court. The response further contends that the current bankruptcy code provisions give the bankruptcy court exclusive

that, inasmuch as the bankruptcy proceeding did not stay the Board proceeding, he intended to file notice for summary judgment.

jurisdiction over all controversies affecting the debtor or the debtor's estate.

As indicated above, Respondent was notified by letter that its answer to the complaint was overdue and that a Motion for Summary Judgment would be filed if no answer was filed immediately. To date, Respondent has failed to file an answer to the complaint. The response to the Notice To Show Cause does not deny the commission of any unfair labor practices by Respondent, and, therefore, the allegations of the complaint stand uncontroverted. The response claims that the bankruptcy court has exclusive jurisdiction in this matter, but does not explain why Respondent failed to contact the Regional Office concerning an answer or an extension of time for filing an answer. Accordingly, we find that the response to the Notice To Show Cause does not constitute good cause for Respondent's failure to file a timely answer within the meaning of Section 102.20 of the Board's Rules and Regulations.²

Therefore, in accordance with the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed to be admitted and are so found by the Board, and the General Counsel's Motion For Summary Judgment is granted.

On the basis of the entire record, the Board makes the following:

FINDING OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Pennsylvania corporation with an office and place of business in Shippingport, Pennsylvania, where it has been engaged in the operation of a coal preparation plant. During the 12-month period ending July 1, 1979, Respondent, in the course and conduct of its operations described above, provided services valued in excess of \$50,000 for other enterprises within the Commonwealth of Pennsylvania, including Ohio Fuel Sales Company. Ohio Fuel Sales Company, a Pennsylvania corporation with its principal office in Johnstown, Pennsylvania, is engaged in the nonretail purchase and sale of coal. During the 12-month period ending July 1, 1979, Ohio Fuel Sales Company, in the course and conduct of its operations described above, purchased and received at its Pennsylvania facilities products, goods, and materials valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the

meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Mine Workers of America, District No. 5, Local Union No. 1486, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The 8(a)(5) and (1) Violations*

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's Peggs Run coal mine located at Shippingport, Pennsylvania; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

On May 31, 1966, the Union was certified as the exclusive collective-bargaining representative of the employees in the above-described unit. At all times since May 31, 1966, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the above-described unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about March 8, 1979, and continuing to date, certain employees of Respondent represented by the Union and employed at Respondent's Shippingport, Pennsylvania, facility, concertedly ceased work and engaged in a strike. Since on or about June 29, 1979, and continuing to date, Respondent has failed and refused to pay accrued vacation benefits due all of its striking employees, including James D. Beachem, Robert C. Bollinger, Richard D. Burton, Harry A. Carson, Robert Lee Carson, Robert Lynn Carson, Asa V. Lemley, Daniel Logston, Sherman Tressler, Wilbert A. Weekley, and Charles B. Wright. Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to such acts and conduct.

Accordingly, we find that by the aforesaid conduct Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with

² In this regard, see *The Monroe Furniture Company, Inc.*, 231 NLRB 143 (1977), and *Evans Express Company, Inc. and Intercontinental Systems, Inc.*, 232 NLRB 655 (1977).

the Union as the exclusive representative of the employees in the appropriate unit. By such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

B. *The 8(a)(3) and (1) Violations*

As noted above, since on or about June 29, 1979, and continuing to date, Respondent has failed and refused to pay accrued vacation benefits due all of its striking employees, including James D. Beachem, Robert C. Bollinger, Richard D. Burton, Harry A. Carson, Robert Lee Carson, Robert Lynn Carson, Asa V. Lemley, Daniel Logston, Sherman Tressler, Wilbert A. Weekley, and Charles B. Wright.

Accordingly, we find that, by the aforesaid conduct, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in the Union. By such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Such affirmative action shall include that Respondent, upon request, meet and bargain with the Union as the exclusive representative of its employees, and that it cease and desist from unilaterally, without notification to or consultation with the Union, failing and refusing to pay accrued vacation benefits due all its striking employees.

We have found that Respondent discriminated against those employees listed in section III, B, above, by failing and refusing, since on or about June 29,

1979, and continuing to date, to pay them accrued vacation benefits. Accordingly, we shall order that Respondent make whole the employees referred to above by paying each of them the vacation benefits withheld, with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).³

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America, District No. 5, Local Union No. 1486, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees at the Employer's Peggs Run coal mine located at Shippingport, Pennsylvania; excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing, since on or about June 29, 1979, and at all times thereafter, to pay accrued vacation benefits due all of its striking employees, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of Respondent's employees with respect to such acts and conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. By engaging in the aforesaid conduct, Respondent has discriminated, and is discriminating, in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

³ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession, Shippingport, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to negotiate and bargain with United Mine Workers of America, District No. 5, Local Union No. 1486, as the exclusive collective-bargaining representative of its employees in the appropriate unit, with regard to its decision to refuse pay, since on or about June 29, 1979, and at all times thereafter, accrued vacation benefits due all of its striking employees. The appropriate unit is:

All production and maintenance employees at the Employer's Peggs Run coal mine located at Shippingport, Pennsylvania; excluding all office clerical employees and guards, professional employees, and supervisors as defined in the Act.

(b) Failing and refusing to pay accrued vacation benefits due all of its striking employees because of their membership in, support of, or activities on behalf of the above-named labor organization, or any other labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, negotiate and bargain collectively and in good faith with United Mine Workers of America, District No. 5, Local Union No. 1486, as the exclusive representative of the employees in the aforesaid appropriate unit, with regard to its decision to refuse paying accrued vacation benefits to all of its striking employees.

(b) Make whole the following employees for any losses in accrued vacation benefits which they may have suffered as a result of the discrimination against them, plus interest, in the manner and for the period set forth in the section of this Decision entitled "The Remedy":

James D. Beachem	Asa V. Lemley
Robert C. Bollinger	Daniel Logston
Richard D. Burton	Sherman Tressler
Harry A. Carson	Wilbert A. Weekley
Robert Lee Carson	Charles B. Wright
Robert Lynn Carson	

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying,

all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Shippingport, Pennsylvania, facility, or any other facility to which it has subsequently moved, copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

* In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL NOT refuse to negotiate and bargain with United Mine Workers of America, District No. 5, Local Union No. 1486, as the exclusive collective-bargaining representative of our employees in the appropriate unit, with respect to our decision to refuse paying accrued vacation benefits due all of our striking employees. The appropriate unit is:

All production and maintenance employees employed by World Services Corporation and/or Peggs Run Coal Company; and World Services Corporation, Debtor in Possession, at our Shippingport, Pennsylvania facility; excluding all office clerical employees and guards, professional employees, and supervisors as defined in the Act.

WE WILL NOT refuse to pay accrued vacation benefits due our striking employees or otherwise discriminate against employees because of their protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees

in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, negotiate and bargain collectively and in good faith with United Mine Workers of America, District No. 5, Local Union No. 1486, as the exclusive collective-bargaining representative of our employees in the aforesaid appropriate unit, with regard to our decision to refuse to pay accrued vacation benefits due our striking employees.

WE WILL make whole the following employees for any losses in vacation benefits incurred by

them as a result of our refusal to pay accrued vacation benefits, together with interest:

James D. Beachem	Asa V. Lemley
Robert C. Bollinger	Daniel Logston
Richard D. Burton	Sherman Tressler
Harry A. Carson	Wilbert A. Weekley
Robert Lee Carson	Charles B. Wright
Robert Lynn Carson	

WORLD SERVICES CORPORATION AND/OR
PEGGS RUN COAL COMPANY; AND WORLD
SERVICES CORPORATION, DEBTOR IN
POSSESSION