

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

COBALT COAL CORP. MINING, INC.

and

UNITED MINE WORKERS OF
AMERICA, AFL-CIO

Cases 9-CA-092229

9-CA-095354

9-CA-096073

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

1. Upon charges and amended charges (copies with proofs of service are attached to Motion as Exhibit A), filed by the United Mine Workers of America, AFL-CIO, (the Union), alleging that Cobalt Coal Corp. Mining, Inc., (Respondent) has been engaging in unfair labor practices as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. 151, et seq., (the Act), the Acting General Counsel of the National Labor Relations Board, (the Board), by the undersigned pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, (Rules and Regulations) issued an Order Consolidating Cases, Consolidated Complaint, Compliance Specification and Notice of Hearing on February 25, 2013, alleging Respondent violated Section 8(a)(1) and (3) of the Act. (A copy of the Order Consolidating Cases, Consolidated Complaint, Compliance Specification and Notice of Hearing with proof of service is attached to the Motion as Exhibit B.)

2. Controversy having arisen over the amounts of backpay due Johnny Sims, Edie Brunch, Bruce Blankenship, William Mullins, Fred Colman and Danny Smith, (the discriminatees), under the consolidated complaint, as described above herein, the Regional Director of the Board for Region 9, pursuant to Section 102.54 of the Board's Rules and Regulations, issued the

compliance specification that was not consolidated with the consolidated complaint described herein.

3. The consolidated complaint and compliance specification notified Respondent that under Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent had an obligation to timely file an answer and that the answer must be received by the Regional Office on or before March 11, 2013, ^{1/} or postmarked on or before March 10, 2013, and if no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint and compliance specification are true. Respondent did not file an answer within the required time and did not request an extension of time in which to file an answer.

4. An answer was not received from Respondent by March 11, 2013, so the undersigned, on March 19, 2013, sent a letter, by regular U.S. mail and e-mail, to Respondent advising that unless an answer was filed by the close of business on March 25, 2013, or a request was made for additional time to file an answer, the undersigned would file with the Board a Motion for Default Judgment requesting that all allegations of the consolidated complaint and compliance specification be deemed admitted as true. (A copy of the letter and e-mail are attached hereto as Exhibit A.)

5. On March 26, 2013, Respondent, by its Owner and President Michael Crowder, sent an e-mail letter to the Region stating that it was insolvent and unable to afford counsel or file an answer. (A true copy of this e-mail letter is attached hereto as Exhibit A.) By a letter dated March 28, 2013, the undersigned advised Respondent that counsel was not required to engage or to file an answer. (A copy of the letter dated March 28, 2013 is attached hereto as Exhibit B.) To date, Respondent has not filed an answer or made any reply to that letter.

^{1/} The consolidated complaint and compliance specification inadvertently only provided 14 days for the filing of an answer instead of the 21 days allowed by Section 102.56 of the Board's Rules and Regulations.

6. Respondent has failed to file an answer and has failed to provide a legitimate basis for failing to do so. It is well settled that if a party charged with an unfair labor practice in a complaint fails to file an answer to the complaint within the time and the manner prescribed by the Board's Rules and Regulations, all allegations in the complaint are deemed to be admitted to be true and may be so found by the Board, and judgment may be rendered on the basis of the complaint alone. *Bay Recycling, Inc.*, 292 NLRB 1293 (1989); *Thermo, Inc.*, 291 NLRB No. 26 (1988); *Mutual Redevelopment Houses, Inc.*, 283 NLRB (1987); *Neal B. Scott Commodities, Inc.*, 238 NLRB 32 (1978). Similarly, because of Respondent's failure to file an answer to the compliance specification within the time and manner prescribed by the Board's Rules and Regulations, the Board may find all the allegations as being admitted to be true. *Boilermakers Local Lodge 83, affiliated with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO (Capitol Iron Workers Company)*, 357 NLRB No. 12 (2011).

WHEREFORE, the Acting General Counsel moves that all the allegations of the consolidated complaint and compliant specification be deemed admitted to be true and be so found by the Board, for the failure of Respondent to file an answer and prays for the relief sought in the Motion for Default Judgment.

Dated at Cincinnati, Ohio this 3rd day of April 2013.

Respectfully submitted,

/s/ Julius U. Emetu, II

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Attachments