

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

In the Matter of COBALT COAL CORP. MINING, INC. <p style="text-align: center;">and</p> UNITED MINE WORKERS OF AMERICA, AFL-CIO	Cases 9-CA-092229 9-CA-095354 9-CA-096073
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Date of Mailing February 25, 2013

AFFIDAVIT OF SERVICE OF ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT, COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by certified mail upon the following persons, addressed to them at the following addresses:

MIKE CROWDER COBALT COAL CORP. MINING, INC. PO BOX 191 101 BULLDOG LANE PREMIER, WV 24878-0191 <u>BY REGULAR MAIL:</u> CHARLES F. DONNELLY, ATTORNEY UNITED MINE WORKERS OF AMERICA 1300 KANAWHA BLVD E CHARLESTON, WV 25301-3001	<p style="text-align: center;">***** National Labor Relations Board Washington, D.C. 20570</p>
Subscribed and sworn to before me this ____ day of _____ 2013	Designated Agent NATIONAL LABOR RELATIONS BOARD

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

In the Matter of

COBALT COAL CORP. MINING, INC.

and

Cases 9-CA-092229

9-CA-095354

UNITED MINE WORKERS OF AMERICA, AFL-CIO

9-CA-096073

ORDER CONSOLIDATING CASES
CONSOLIDATED COMPLAINT,
COMPLIANCE SPECIFICATION
AND
NOTICE OF HEARING

Pursuant to Sections 102.33 and 102.54(b) of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 9-CA-092229, 9-CA-095354 and 9-CA-096073, which are based on charges filed by United Mine Workers of America, AFL-CIO (Union), respectively, against Cobalt Coal Corp. Mining, Inc. (Respondent) and that this Order Consolidating Cases, Consolidated Complaint and Compliance Specification and Notice of Hearing, be consolidated.

This Order Consolidating Cases, Consolidated Complaint, Compliance Specification and Notice of Hearing, which are based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. (a) The charge in Case 9-CA-092229 was filed by the Union on October 29, 2012, and a copy was served by regular mail on Respondent on October 30, 2012.

(b) The first amended charge in Case 9-CA-092229 was filed by the Union on December 7, 2012, and a copy was served by regular mail on Respondent on December 10, 2012.

(c) The second amended charge in Case 9-CA-092229 was filed by the Union on January 29, 2013, and a copy was served by regular mail on Respondent on January 30, 2013.

(d) The charge in Case 9-CA-095354 was filed by the Union on December 20, 2012, and a copy was served by regular mail on Respondent on December 21, 2012.

(e) The amended charge in Case 9-CA-095354 was filed by the Union on January 29, 2013, and a copy was served by regular mail on Respondent on January 30, 2013.

(f) The charge in Case 9-CA-096073 was filed by the Union on January 9, 2013, and a copy was served by regular mail on Respondent on January 10, 2013.

2. (a) At all material times since about March 8, 2010, at which time Respondent commenced its operations, and continuing to date, Respondent has been a corporation with an office in Premier, West Virginia, and has been engaged in the mining of coal at its facility in Hensley, West Virginia.

(b) In conducting its operations during the 12-month period ending November 7, 2012, Respondent sold and shipped from its Hensley, West Virginia facility goods valued in excess of \$50,000 directly to Alpha Natural Resources, Inc. which operates a coal preparation plant located in the State of West Virginia, and is an enterprise directly engaged in interstate commerce that shipped goods valued in excess of \$50,000 directly to points located outside the State of West Virginia.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act).

Daniel Smith - Superintendant
JC Woolridge - Out-by Foreman
Clayton Van Roberts - Mine Foreman

5. Respondent, by JC Woolridge, at its Hensley, West Virginia facility:

(a) About September 24, 2012:

(i) By telling an employee that Respondent knew what employees were doing about the Union, created an impression among Respondent's employees that their union activities were under surveillance by Respondent.

(ii) Interrogated an employee about the employee's union activities.

(b) About October 25, 2012, interrogated an employee about employees involvement in a petition supporting the Union.

6. Respondent, by Daniel Smith, at its Hensley, West Virginia facility:

(a) About October 15, 2012:

(i) By telling an employee that he knew which employees were the leaders of the Union, created an impression among its employees that their union activities were under surveillance by Respondent.

(ii) Interrogated an employee about which employees signed union authorization cards.

(b) About October 25, 2012, interrogated an employee about which employees were attempting to form a Union.

(c) About November 1, 2012:

(i) Threatened an employee that Respondent would shut down the mine if employees voted in the Union.

(ii) Interrogated an employee about whether the employee signed a union card.

(d) About November 7, 2012:

(i) Interrogated an employee about how the employee voted in the election.

(ii) Interrogated employees about who voted for the Union during the election.

(iii) By telling employees that Respondent knew which employees did not vote for the Union, created an impression among its employees that their union activities were under surveillance by Respondent.

(iv) About November 7, 2012, told employees that they were being sent home prior to the completion of their work shift because the employees voted in favor of the Union.

7. About November 7, 2012, Respondent, by Clayton Van Roberts, at its Hensley, West Virginia facility, interrogated an employee about how the employees voted in the election.

8. (a) Starting about October 22, 2012, Respondent refused to recall and/or assign work to its employee Johnny Simms.

(b) About November 7, 2012, Respondent sent home the following employees prior to the completion of their work shift:

- (i) Eddie Branch
- (ii) Bruce Blankenship
- (iii) William Mullins
- (iv) Fred Coleman
- (v) Danny Smith

(c) Respondent engaged in the conduct described above in paragraphs 8(a) and (b) because the named employees of Respondent formed, joined or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

9. By the conduct described above in paragraphs 5 through 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraph 8, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Acting General Counsel also seeks, as part of the remedy for the allegations in paragraph 8 that Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods.

The Acting General Counsel further seeks all relief necessary to remedy the alleged unfair labor practices.

COMPLIANCE SPECIFICATION

WHEREFORE, in order to liquidate the amount owed by Respondent and to avoid unnecessary cost or delays, the undersigned issues this compliance specification and alleges as follows:

12. As a result of the conduct described above in paragraph 8 of the consolidated complaint, the named employees of Respondent are entitled to backpay in the manner and amount computed as follows.

13. The backpay period for employee Johnny Simms begins on October 22, 2012, the date Respondent refused to recall and/or assign him work, and ends on November 7, 2012, the date Respondent ceased its operations. The backpay period for the remaining employees named above in paragraph 8 of the consolidated complaint is the 4 hours of lost work they suffered as a result of Respondent sending them home prior to the completion of their shift on November 7, 2012.

14. Gross backpay is the wages the employees named above in paragraph 8 of the consolidated complaint would have earned during the backpay period and is calculated as their hourly rate times the hours they would have worked but for the discrimination against them.

15. Interim earnings are the wages earned by the employees named above in paragraph 8 of the consolidated complaint during the backpay period. The employees named above in paragraph 8 of the consolidated complaint had no deductible interim earnings.

16. Net backpay is the difference between gross backpay and interim earnings.

17. The net backpay owed to Johnny Simms as a result of Respondent's conduct described above in paragraph 8(a) of the consolidated complaint is \$1,600. This total net backpay is calculated as Simms' hourly wage rate while employed by Respondent, \$25.00 times 64 hours, the total hours worked by the employee of Respondent who performed Simms' duties.

18. The total net backpay owed to Bruce Blankenship as a result of Respondent's conduct described above in paragraph 8(b) of the consolidated complaint is \$120.00. This total net

backpay is calculated as Blankenship's wage rate while employed by Respondent, \$30.00 times 4 hours.

19. The total net backpay owed to Eddie Branch as a result of Respondent's conduct described above in paragraph 8(b) of the consolidated complaint is \$130.00. This total net backpay is calculated as Branch's wage rate while employed by Respondent, \$32.50 times 4 hours.

20. The total net backpay owed to Fred Coleman as a result of Respondent's conduct described above in paragraph 8(b) of the consolidated complaint is \$104.00. This total net backpay is calculated as Coleman's wage rate while employed by Respondent, \$26.00 times 4 hours.

21. The total net backpay owed to William Mullins as a result of Respondent's conduct described above in paragraph 8(b) of the consolidated complaint is \$100. This total net backpay is calculated as Mullins' wage rate while employed by Respondent, \$25.00 times 4 hours.

22. The total net backpay owed to Danny Smith as a result of Respondent's conduct described above in paragraph 8(b) of the consolidated complaint is \$130.00. This total net backpay is calculated as Smith's wage rate while employed by Respondent, \$32.50 times 4 hours.

23. Summarizing the facts and calculations specified above, the obligation of Respondent under the Order Consolidating Cases, Consolidated Complaint, Compliance Specification and Notice of Hearing, to make the employees whole for losses suffered as a result of Respondent's unlawful conduct will be discharged by payment to the employees of the amounts set forth below, with daily compounded interest accruing on the entire amount to the date of payment, minus tax withholdings required by federal and state law:

Johnny Simms	\$1,600.00
Bruce Blankenship	\$ 120.00
Eddie Branch	\$ 130.00
Fred Coleman	\$ 104.00
William Mullins	\$ 100.00
Danny Smith	\$ 130.00

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20, 102.21, and 102.56 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint and compliance specification. The answer must be **received by this office on or before March 11, 2013 or postmarked on or before March 10, 2013.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. *To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that

such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint and compliance specification are true.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification paragraphs 12 to 23 that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

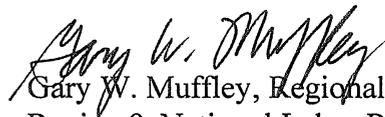
If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint and compliance specification are true. If the answer fails to deny allegations of the compliance specification paragraphs 12 to 23 in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those

allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **April 23, 2013, 9 a.m. at a place to be scheduled in Welch, West Virginia**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint and compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Cincinnati, Ohio this 25th day of February 2013.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Cases 9-CA-092229, 9-CA-095354, 9-CA-096073

The issuance of this notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements will not be granted unless good and sufficient grounds are shown and the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in detail;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that the fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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BY REGULAR MAIL:

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