

UMWA Exhibit 2

Amended Charge filed by UMWA,
9-CA-42057

United Mine Workers of America

JUDITH RIVLIN
ASSOCIATE
GENERAL COUNSEL



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UNITED MINE WORKERS' HEADQUARTERS
8315 LEE HIGHWAY

Fairfax, VA

22031-2215



July 21, 2005

David P. Morgan
National Labor Relations Board, Region 9
3003 John Weld Beck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

RE: Massey Case 9-CA-42057-1

Dear Mr. Morgan:

Enclosed please find an original and four (4) copies of the amended unfair labor practice charge and its attachment for filing in the above-reference matter.

Thank you for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Judith Rivlin".

Judith Rivlin

Enclosures

Cc: Ray Hall, Mammoth Coal Co. (*via telefax and U.S. Mail*)

DO NOT WRITE IN THIS SPACE

Case 9-CA-42057-1	Date Filed
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INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Massey	b. Number of Workers Employed approx. 125
c. Address (street, city, State, ZIP, Code) Mammoth Coal Company, P.O. Box 120 Leivasy, West Virginia 26676	d. Employer Representative Ray Hall
	e. Telephone No. (304) 442-7201 Fax No. (304) 442-9451
f. Type of Establishment (factory, mine, wholesaler, etc.) Coal Mine	g. Identify Principal Product or Service Coal
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), subsections (1) and (list subsections) (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices.)	
<p>Since on or about December 6, 2004 when Massey re-opened Mammoth Coal Mine and related facilities, it has acted in a discriminatory manner regarding the hiring of Union members who previously worked at this mine and related facilities. The related facilities include the preparation plant and the surface/reclamation, where coal is stored and trucked.</p> <p>The above-named employer has knowingly failed to hire most of the Local 8843 members who applied for jobs at the Massey-run Mammoth Coal Mine, particularly where those members applied for the jobs that they previously held at the same facilities.</p> <p>The above-named employer has also refused to hire Union members for the purposes of refusing to recognize and bargain with the Union.</p> <p>The above-named employer has refused-to-hire or refused to consider-to-hire the Union members listed in Attachment A.</p>	
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Mine Workers of America	
4a. Address (street and number, city, State, and ZIP Code) 8315 Lee Highway Fairfax, Virginia 22031	4b. Telephone No. (703) 208-7180 Fax No. (703) 208-7134
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Mine Workers of America	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Judith Rubin</u> (Signature of representative or person making charge)	Associate General Counsel (Title, if any)
Address <u>8315 Lee Highway, Fairfax, Virginia 22031</u>	Fax No. <u>(703) 208-7134</u> (703) 208-7180 (Telephone No.)
	July 21, 2005 Date

Attachment A: Case 9-Ca-42057-1

Union Members Who Applied for Jobs:

- 1.) \ Terry Abbott
- 2.) Wilbert Adkins
- 3.) John Alderson
- 4.) Michael Armstrong
- 5.) Charles Bennett
- 6.) Randel Bowen, Sr.
- 7.) Roger Bowles
- 8.) Jerry Brown
- 9.) Joseph Brown
- 10.) Norman Brown
- 11.) Mark Cline
- 12.) Orval Coffey
- 13.) Leo Cogar
- 14.) Tilman Cole
- 15.) Michael Cordle
- 16.) Terry Cottrell
- 17.) David Crawford
- 18.) Jimmy Craze
- 19.) Guy Crist
- 20.) Jackie Danbury
- 21.) John Daniels
- 22.) Dewey Dorsey
- 23.) Roger Duncan
- 24.) Thomas Dunn
- 25.) Robert Edwards
- 26.) Stanley Elkins
- 27.) William Fair, Jr.
- 28.) Lacy Flint
- 29.) Charles Ford, Jr.
- 30.) David Grant
- 31.) Dennis Gray
- 32.) Michael Gunning
- 33.) Babe Halstead
- 34.) Paul Harvey
- 35.) Charles Hendricks
- 36.) Charles Hill
- 37.) Gilbert Hill
- 38.) Cheryl Holcomb
- 39.) Robert Hornsby
- 40.) Clarence Huddleston
- 41.) Jeffrey Hughes
- 42.) Rocky Hughes

- 43.) Mike Johnson
- 44.) Alvin Justice
- 45.) Denver Justice
- 46.) John Kauff
- 47.) Tommie Keith
- 48.) Barry Kidd
- 49.) Randy Kincaid
- 50.) Chester Laing
- 51.) David Lane
- 52.) Marion Lane
- 53.) Michael Lanham
- 54.) George Leake
- 55.) Russell Legg
- 56.) Williams Lucas
- 57.) Robert McKnight, Jr.
- 58.) Ricky Miles
- 59.) James Mimms
- 60.) Charles Mooney
- 61.) Gregory Moore
- 62.) Danny Morris
- 63.) James Moschino
- 64.) James Nichols
- 65.) Robert Nickoson
- 66.) William Nugent
- 67.) John Nutter
- 68.) Robert Painter
- 69.) Ronald Payne
- 70.) Donald Peters
- 71.) David Preast
- 72.) Jerry Preast
- 73.) Danny Price
- 74.) Joe Rader
- 75.) James Roach
- 76.) Doyle Roat
- 77.) Gary Roat
- 78.) Michael Roat
- 79.) Paul Roat
- 80.) Shannon Roat
- 81.) Gary Robinson
- 82.) Charles Rogers
- 83.) Michael Rosenbaum
- 84.) Michael Ryan
- 85.) Melvin Seacrist, Jr.
- 86.) Lawson Shaffer, Jr.
- 87.) Russell Shearer
- 88.) Eddie Shuemaker

- 89.) Dwight Siemiaczko
- 90.) Donald Stevens
- 91.) Randy Stump
- 92.) Jeffrey Styers
- 93.) Jackie Tanner
- 94.) Ernest Taylor
- 95.) Roger Taylor
- 96.) Gary Totten
- 97.) Charles Treadway
- 98.) Byron Tucker, Jr.
- 99.) Larry Vassil
- 100.) Thomas Ward
- 101.) James Whittington, Jr.
- 102.) Gerald Wilburn
- 103.) Charles Williams
- 104.) James Williams
- 105.) Philip Williams
- 106.) William Willis
- 107.) Ralph Wilson
- 108.) Robert Wilson
- 109.) Fred Wright

UMWA Exhibit 3a

Original Complaint

8/18/06

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

In the Matter of

SPARTAN MINING COMPANY D/B/A
MAMMOTH COAL COMPANY, AN OPERATING
SUBSIDIARY OF MASSEY ENERGY COMPANY

and

Case 9-CA-42057

UNITED MINE WORKERS OF AMERICA

COMPLAINT
AND
NOTICE OF HEARING

United Mine Workers of America, herein called the Union, has charged that Massey, herein described by its correct name, Spartan Mining Company d/b/a Mammoth Coal Company, an operating subsidiary of Massey Energy Company, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151, et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. (a) The original charge was filed by the Union on June 2, 2005, and a copy was served by regular mail on Respondent on June 3, 2005.

(b) The first amended charge was filed by the Union on June 28, 2005, and a copy was served by regular mail on Respondent on the same date.

(c) The second amended charge was filed by the Union on July 22, 2005, and a copy was served by regular mail on Respondent on the same date.

(d) The third amended charge was filed by the Union on June 22, 2006, and a copy was served by regular mail on Respondent on the same date.

2. (a) At all material times, Respondent, a corporation, with its principal office in Leivasy, West Virginia, has been engaged in the mining and processing of coal at various facilities in and around Kanawha County, West Virginia.

(b) During the past 12 months, Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at its Kanawha County, West Virginia facilities, goods valued in excess of \$50,000 directly from points 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. (a) About August 17, 2004, Respondent purchased the business of Horizon Natural Resources Company and its subsidiaries Cannelton Industries, Inc., Cannelton Coal Company and Dunn Coal & Dock Company, herein collectively called Horizon, and since about December 3, 2004, has operated the prior business of Horizon in basically unchanged form.

(b) If not for the conduct described below in paragraph 6, Respondent would have employed, as a majority of its employees, individuals who were previously employed by Horizon.

(c) Based on the operations and conduct described above in paragraphs 3(a) and (b), and below in paragraph 6, Respondent has continued as the employing entity and is a successor to Horizon.

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

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

Dave Hughart	- President
Ray Hall	- Mine Foreman
John Adamson	- Prep Plant Superintendent
Donnie Rutherford	- Shift Foreman
Jimmy Nottingham	- Safety Director
Rick Burke	- Chief Electrician
Kevin Doss	- Human Resource Manager
Jennifer Chandler	- Massey Coal Services, Human Resource Manager
Kyle Bane	- Massey Coal Services, Human Resource Manager

6. (a) Since about December 3, 2004, and continuing thereafter to date, Respondent has refused to hire the former employees of Horizon listed on Exhibit A.

(b) Respondent engaged in the conduct described above in paragraph 6(a) because the named former employees of Horizon were members of the Union, engaged in concerted activities, and to discourage employees from engaging in these activities and in order to avoid an obligation to recognize and bargain with the Union.

7. The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees engaged in the removal of overburden and coal waste, preparation, processing, and cleaning of coal, and transportation of coal (except by waterway or rail, not owned by Respondent), repair and maintenance work normally performed at the mine site or at a central shop of Respondent; and maintenance of gob piles, and mine roads, and work of the type customarily related to all of the above at Respondent's mines and facilities; but excluding all office clerical employees, and all professional employees, guards, and supervisors as defined in the Act.

8. (a) Since December 20, 2001, the Union had been the exclusive collective-bargaining representative of the Unit employed by Horizon and during that period of time the Union had been recognized as such representative by Horizon. This recognition had been embodied in a collective-bargaining agreement between the Union and the Bituminous Coal Operators Association, to which Horizon agreed to be bound, effective from January 1, 2002 to December 31, 2006.

(b) From December 20, 2001 to December 2, 2004, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Horizon.

(c) At all times since December 3, 2004, based on the conduct and facts described above in paragraphs 3, 6 and 8(a) and (b), the Union has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

(d) At all times since December 3, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

9. Since about December 3, 2004, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit and has unilaterally established mandatory terms and conditions of employment for the employees in the Unit.

10. By the conduct described above in paragraph 6, 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. By the conduct described above in paragraph 9, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 and 10, the General Counsel also seeks an Order requiring that Respondent preserve and within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner. In addition, for the unfair labor practices alleged above in paragraphs 9 and 11, the General Counsel seeks an Order requiring Respondent to rescind, if the Union requests it to do so, the terms and conditions of employment it established at the time it commenced its operations and reinstate the terms and conditions of employment that existed under the predecessor, Horizon, until it bargains with the Union in good faith to an agreement or lawful impasse and make Unit employees whole for any losses resulting from its unlawful conduct. The General Counsel further seeks all other relief as may be appropriate to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this

office on or before September 1, 2006, or postmarked on or before August 31, 2006.

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **October 10, 2006, at 1 p.m., at the County Commission Courtroom, First Floor, Kanawha County Courthouse, 409 Virginia Street, East, Charleston, 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 complaint. 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 18th day of August 2006.



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

UMWA Exhibit 3b

Amended Complaint

10/6/06

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

In the Matter of

MASSEY ENERGY COMPANY AND ITS
SUBSIDIARY, SPARTAN MINING COMPANY
D/B/A MAMMOTH COAL COMPANY

and

Case 9-CA-42057

UNITED MINE WORKERS OF AMERICA

AMENDED COMPLAINT
AND
NOTICE OF HEARING

United Mine Workers of America, herein called the Union, has charged that Massey, herein called by its correct names Massey Energy Company and its subsidiary, Spartan Mining Company d/b/a Mammoth Coal Company, herein called Respondent Massey and Respondent Mammoth, respectively, and collectively called Respondents, have been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151, et seq., herein called the Act. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Amended Complaint and Notice of Hearing and alleges as follows:

1. (a) The original charge was filed by the Union on June 2, 2005, and a copy was served by regular mail on Respondents on June 3, 2005.
- (b) The first amended charge was filed by the Union on June 28, 2005, and a copy was served by regular mail on Respondents on the same date.

(c) The second amended charge was filed by the Union on July 22, 2005, and a copy was served by regular mail on Respondents on the same date.

(d) The third amended charge was filed by the Union on June 22, 2006, and a copy was served by regular mail on Respondents on the same date.

2. (a) At all material times, Respondent Mammoth, a corporation, with an office in Leivasy, West Virginia, has been engaged in the mining and processing of coal at various facilities in and around Kanawha County, West Virginia.

(b) During the past 12 months, Respondent Mammoth, in conducting its operations described above in paragraph 2(a), purchased and received at its Kanawha County, West Virginia facilities, goods valued in excess of \$50,000 directly from points outside the State of West Virginia.

(c) During the past 12 months, Respondent Massey, a corporation, with its principal office in Richmond, Virginia, has performed various administrative services for its subsidiaries and operations and satisfies the Board's direct outflow and/or direct inflow non-retail jurisdictional standards.

(d) At all material times, Respondents have been employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. (a) About August 17, 2004, Respondents acquired the business of Horizon Natural Resources Company and its subsidiaries Cannelton Industries, Inc., Cannelton Coal Company and Dunn Coal & Dock Company, herein collectively called Horizon, and since about December 3, 2004, Respondents, or one of them, have operated the prior business of Horizon in basically unchanged form.

(b) If not for the conduct described below in paragraph 6, Respondent Mammoth in the operation of the former Horizon business, would have employed, as a majority of its employees, individuals who were previously employed by Horizon.

(c) Based on the operations and conduct described above in paragraphs 3(a) and (b), and below in paragraph 6, Respondent Mammoth has continued as the employing entity and is a successor to Horizon.

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

5. (a) At all material times, Respondent Massey and Respondent Mammoth have been agents of each other, acting for and on behalf of each other.

(b) At all material times, the following individuals held the position set forth opposite their respective names and have been supervisors of Respondents within the meaning of Section 2(11) of the Act and/or agents of Respondents within the meaning of Section 2(13) of the Act:

John Adamson	- Prep Plant Superintendent, Respondent Mammoth
Kyle Bane	- Human Resource Manager, Respondent Massey subsidiary Massey Coal Services
Don L. Blankenship	- Chairman, CEO, and President, Respondent Massey
Rick Burke	- Chief Electrician, Respondent Mammoth
Jennifer Chandler	- Human Resource Manager, Respondent Massey subsidiary Massey Coal Services
Kevin Doss	- Human Resource Manager, Respondent Mammoth
Ray Hall	- Mine Foreman, Respondent Mammoth
Dave Hughart	- President, Respondent Mammoth and Respondent Massey subsidiary Green Valley Coal Company
Katharine W. Kenny	- Director of Investor Relations, Respondent Massey
Shane McPherson	- Safety Director, Respondent Mammoth
Jimmy Nottingham	- Safety Director, Respondent Mammoth
Donnie Rutherford	- Shift Foreman, Respondent Mammoth

6. (a) Since about December 3, 2004, and continuing to date, Respondent Mammoth has refused to hire the former employees of Horizon listed on Exhibit A.

(b) Respondent Mammoth engaged in the conduct described above in paragraph 6(a) because the named former employees of Horizon were members of the Union, engaged in concerted activities, and to discourage employees from engaging in these activities and in order to avoid an obligation to recognize and bargain with the Union.

7. The following employees of Respondent Mammoth, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, at its operations described above in paragraph 3(a):

All employees engaged in the removal of overburden and coal waste, preparation, processing, and cleaning of coal, and transportation of coal (except by waterway or rail, not owned by Respondent Mammoth), repair and maintenance work normally performed at the mine site or at a central shop of Respondent Mammoth; and maintenance of gob piles, and mine roads, and work of the type customarily related to all of the above at Respondent Mammoth's mines and facilities; but excluding all office clerical employees, and all professional employees, guards, and supervisors as defined in the Act.

8. (a) From about December 20, 2001 to about December 2004, the Union had been the exclusive collective-bargaining representative of the Unit employed by Horizon and during that period of time the Union had been recognized as such representative by Horizon. This recognition had been embodied in a collective-bargaining agreement between the Union and the Bituminous Coal Operators Association, to which Horizon agreed to be bound, the most current agreement being effective from January 1, 2002 to December 31, 2006.

(b) From December 20, 2001 to December 2, 2004, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Horizon.

(c) At all times since December 3, 2004, based on the conduct and facts described above in paragraphs 3, 6 and 8(a) and (b), the Union has been the exclusive collective-bargaining representative of Respondent Mammoth's employees in the Unit.

(d) At all times since December 3, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit employed by Respondent Mammoth.

9. Since about December 3, 2004, Respondent Mammoth has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit and has unilaterally established mandatory terms and conditions of employment for the employees in the Unit.

10. By the conduct described above in paragraph 6, Respondent Mammoth has been discriminating in regard to the hire or tenure or terms or conditions of employment of Respondent Mammoth's employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. By the conduct described above in paragraph 9, Respondent Mammoth have been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of Respondent Mammoth's employees in violation of Section 8(a)(1) and (5) of the Act.

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

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraphs 6 and 10, the General Counsel also seeks an Order requiring that Respondents preserve and within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner. In addition, for the unfair labor practices alleged above in paragraphs 9 and 11, the General Counsel seeks an Order requiring Respondents to rescind, if the Union requests it to do so, the terms and conditions of employment it established at the time it commenced its operations and reinstate the terms and conditions of employment that existed under the predecessor, Horizon, until it bargains with the Union in good faith to an agreement or lawful impasse and make unit employees whole for any losses resulting from its unlawful conduct. The General Counsel further seeks all other relief as may be appropriate to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the complaint. The answer must be received by this office on or before October 20, 2006, or postmarked on or before October 19, 2006. Respondents should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties. The answer may not be filed by facsimile transmission. If no answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on **November 27, 2006, at 1 p.m., at the Kanawha County Courthouse, Courtroom #4, 2nd Floor, 409 Virginia Street, East, Charleston, 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, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. 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 6th day of October 2006.



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

UMWA Exhibit 4

Administrative Hearing, Transcript

1 unless anyone's changing their view on this on the
2 other side?

3 MR. DONNELLY: No, Your Honor, we --

4 JUDGE BOGAS: Nope. Okay. Go ahead,
5 Mr. Becher.

6 MR. BECHER: And with that build-up.
7 Your Honor, General Counsel's evidence will show that
8 at least since the 1970's, and apparently many years
9 before that, the United Mine Workers of America and
10 its Local 8843 have represented a bargaining unit of
11 employees working for Cannelton Industries.

12 At all times relevant to these proceedings,
13 Cannelton operated underground coal mines and the coal
14 preparation plant and coal boating facility in the
15 Cannelton, West Virginia area.

16 Since at least 1991, Cannelton -- Cannelton
17 Industries owned a subsidiary called Dunn Coal and
18 Dock Company.

19 Dunn Coal and Dock operated a surface mine.
20 Dunn Coal and Dock's employees were also represented
21 by United Mine Workers of America, Local 8843.

22 Although the question of whether these two
23 groups of employees constituted one or two units was
24 apparently never enough of an issue to sort out,
25 because there was some interchange of employees

1 between the two operations, as well as the integration
2 of the Dunn Coal and Dock employees into the overall
3 operations of Cannelton, General Counsel pled these
4 two groups as a single unit.

5 While Respondents have denied that the two
6 companies' employees constituted a single unit, it
7 appears that whether the two operations constituted
8 one or two units is irrelevant to these -- this case.
9 However, General Counsel will offer some evidence on
10 this issue.

11 Cannelton was, itself, owned by various
12 corporations over the years, including Horizon Natural
13 Resources Company. Horizon filed for bankruptcy while
14 the owner of Cannelton, and was liquidated in the
15 United States Bankruptcy Court proceedings in 2004.

16 The assets of Cannelton and Dunn Coal and
17 Dock located in the general area of Cannelton, West
18 Virginia were acquired by A.T. Massey Coal Company,
19 Inc. pursuant to an Asset Purchase Agreement approved
20 by the Bankruptcy Court in September 2004.

21 Following the purchase, the assets were
22 under the control of Respondent Massey Energy. On
23 September 27, 2004, the day that Horizon ceased its
24 Cannelton operations, a subsidiary of Massey, Spartan
25 Mining Company, established the d/b/a of Mammoth Coal

1 Thus Respondents' admitted failure to
2 recognize and bargain with the Union, and Respondents'
3 unilateral changes in the terms and conditions of
4 employment of the Mammoth employees from those of the
5 Horizon work force are also unlawful.

6 As a tangential issue, General Counsel will
7 establish that Respondents Massey, and its family of
8 corporations, constitute an agent for Spartan and its
9 d/b/a Mammoth, and vice versa.

10 Thus, Massey took possession of the
11 operations and engaged the initial hiring of
12 employees, provided human relations and labor law
13 services from its subsidiary Massey Coal Services, and
14 generally is intertwined with Respondent Mammoth's
15 operations.

16 Indeed, in much of its communications with
17 the public, with shareholders, internally, and in SEC
18 filings, the entire group of corporations is not
19 differentiated and is simply referred to as "Massey."

20 One additional issue which General Counsel
21 will, of necessity, address is the service of the
22 charge, a fact which Respondents have denied in their
23 Answers to the Amended Complaint.

24 Respondent Mammoth's counsel has advised
25 that this denial stems from the address used on the

1 charge, and at which Massey was served, P.O. Box 120,
2 Leivasy, West Virginia.

3 This address is the address which
4 Respondent Mammoth, itself, provided to the Mine
5 Safety and Health Administration as the address of
6 Mammoth's offices, and an address which Mammoth
7 continued to utilize in communications with that
8 agency.

9 It is the address set forth on forms
10 utilized by Mammoth's security employees, and it was
11 the address appearing on Mammoth employee paychecks.

12 Not only was a copy of the charge mailed to
13 this address, but the Union faxed a copy of the charge
14 to a phone number serviced by a fax machine that as
15 recently as April of this year was set to identify
16 from it as from Mammoth Coal Company. Thus, General
17 Counsel submits that service of the charge will be
18 clearly established.

19 Finally, due to how General Counsel's case
20 in chief must be structured, we will be offering
evidence to refute reasons offered by Respondents
during the investigation stage of these proceedings,
and offered to a State agency as to why they did not
hire certain employees.

While we do this, we ask Your Honor to not

1 MS. VAUGHAN: You want me to go ahead
2 and do that now? Okay. I would like to move the
3 removal of the name of Danny Morris from the
4 Complaint. He's Number 54.

5 JUDGE BOGAS: Mr. Donnelly? Mr. --
6 Mr. Donnelly?

7 MR. DONNELLY: I -- I don't believe
8 there was any. Could I have a second?

9 JUDGE BOGAS: Okay.

10 MR. DONNELLY: No -- no objection.

11 MR. PARKER: No objection.

12 JUDGE BOGAS: Mr. Roles?

13 MR. ROLES: No objection.

14 JUDGE BOGAS: And this is Danny
15 Morris, did you say, Number 54?

16 MS. VAUGHAN: Danny Morris,
17 (M-O-R-R-I-S). He was --

18 JUDGE BOGAS: Okay. The motion to
19 remove Mr. Morris, Danny Morris from the Complaint is
20 -- is granted.

21 MS. VAUGHAN: Okay. Thank you. And,
22 finally, I was just going to make a standard motion to
23 conform the pleadings to the proof of our case.

24 MR. DONNELLY: No objection.

25 MS. VAUGHAN: I'm always afraid that

1 I'm going to get that wrong, because I was present one
2 time when a counsel moved to amend to move the proof
3 to the pleadings to conform with the pleadings, and
4 I'm always -- I'm always afraid I'll get that wrong.

5 But I move to conform the pleadings to the
6 proof.

7 MR. ROLES: Well, I don't -- I would
8 -- I believe any motion to amend the pleadings should
9 be more specific of that. And in the absence of a --
10 of a specific statement, I object.

11 JUDGE BOGAS: All right. Mr. Parker?

12 MR. PARKER: I would agree. I mean,
13 I don't know what --

14 JUDGE BOGAS: I know that these are
15 fairly standard, but it's a -- it's a pretty big
16 record and there's a lot in there.

17 I -- I'll defer a ruling on the motion to
18 conform the pleadings to the proof at -- at -- you
19 know, and if you have some specific things --

20 MS. VAUGHAN: Okay.

21 JUDGE BOGAS: -- that you want to
22 raise, you -- I -- I -- you can -- you can renew that,
23 as well.

24 MS. VAUGHAN: Okay. I -- and just in
25 case there's some spellings I missed or, you know,

1 some names and --

2 MR. ROLES: Well, I don't have any
3 objections to technical things like that. I mean, I
4 -- I believe that the, you know, motions to correct
5 the transcript for -- for mistakes in spellings and
6 things like that are -- or -- or the -- I won't object
7 to those at any time. But --

8 JUDGE BOGAS: Thank you, Mr. Roles.
9 Is there anything else at this time?

10 MS. VAUGHAN: Not at this time.

11 JUDGE BOGAS: Anything else,
12 Mr. Donnelly?

13 MR. DONNELLY: No, Judge.

14 JUDGE BOGAS: Mr. Roles?

15 MR. ROLES: No, Your Honor.

16 JUDGE BOGAS: Mr. Parker?

17 MR. PARKER: No, Your Honor.

18 JUDGE BOGAS: Let's go off the record
19 for a moment.

20 (Off the record.)

21 JUDGE BOGAS: Back on the record.
22 We're in recess until nine a.m. tomorrow. Thank you.
23 Off the record.

24 (Whereupon, the hearing adjourned at 1:10 p.m.,
25 To be reconvened on March 15, 2007 at 9:00 a.m.)

