UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re: WALTER ENERGY, INC., *et al.*, Debtors.	Chapter 11 Case No. 15-02741-TOM11 Jointly Administered

NOTICE OF
NATIONAL LABOR RELATIONS BOARD'S APPLICATION
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES

PLEASE TAKE NOTICE that on January 4, 2016, the National Labor Relations Board ("NLRB" or the "Board") filed with this Court an application for administrative expenses and request for payment ("Application"). The Board's Application seeks allowance and payment of $5,817.70 in post-petition wages owed to employees of the Debtors Taft Coal Sales & Associates, Inc. ("Taft") and Walter Minerals, Inc. ("WM"), pursuant to an NLRB Decision (reported at 360 NLRB No. 19, enforcement granted by 586 F. App'x 525 (11th Cir. 2014)) and subsequent Order of this Court approving Taft and WM's settlement and compromise of the backpay amount with the NLRB. [Docket No. 1447].

According to the Bankruptcy Code, certain backpay awards granted pursuant to decisions of the Board are treated as administrative expenses under 11 U.S.C. § 503(b)(1)(A)(ii). The backpay award at issue here qualifies as an administrative expense because it was awarded pursuant to a Board proceeding and is attributable to a period of time occurring after the commencement of this bankruptcy case.

1502741160104000000000005

Respectfully submitted,

Dated: January 4, 2016
Washington, D.C.

/s/ Polly Misra
POLLY MISRA, Senior Trial Attorney
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Contempt, Compliance & Special Litigation Branch
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Dated: January 4, 2016
Birmingham, Alabama

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Counsel for National Labor Relations Board

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re: WALTER ENERGY, INC., *et al.*, Debtors.	Chapter 11 Case No. 15-02741-TOM11 Jointly Administered

NATIONAL LABOR RELATIONS BOARD'S APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES

The National Labor Relations Board (the "Board"), a creditor in the instant case, by the undersigned counsel, pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2), submits this request for the allowance and payment of post-petition wages owed to employees of the Debtors Taft Coal Sales & Associates, Inc. ("Taft") and Walter Minerals, Inc. ("WM"), pursuant to an NLRB Decision and subsequent Order of this Court approving Taft and WM's settlement and compromise of the backpay amount with the NLRB. In support of this request, the Board states as follows:

1. On July 15, 2015 (the "Petition Date"), Walter Energy, Inc. and its affiliated debtors and debtors-in-possession (each a "Debtor" and, collectively, the "¨Debtors"), including Debtors Taft and WM, filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing the instant cases (the "Chapter 11 Cases"). The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

2. On the Petition Date, this Court entered an order consolidating these Chapter 11 Cases for procedural purposes only.

3. On January 10, 2014, the National Labor Relations Board issued a Decision and Order (the "NLRB Decision") (reported at 360 NLRB No. 19) in Case Nos. 10-CA-088599 and 10-CA-0932022 (the "NLRB Proceedings") finding that Taft and WM violated sections 8(a)(1) and (5) of the National Labor Relations Act. The NLRB Decision further found that Taft, WM, and Walter Energy, Inc. were a single employer and jointly and severally liable for this violation. The NLRB Decision requires, among other things, that the named Debtors pay backpay amounts for 21 employees. A copy of the NLRB Decision is attached hereto as **Exhibit A** and is made a part hereof.

4. On October 2, 2014, the U.S. Court of Appeals for the Eleventh Circuit issued its judgment (unpublished, reported at 586 F. App'x 525), enforcing the NLRB Decision in full. A copy of the Eleventh Circuit's Order is attached hereto as **Exhibit B** and is made a part hereof.

5. Approximately one year later, on or about October 2, 2015, the Board and Debtors Taft and WM entered into a Settlement Agreement that consensually liquidated Debtors' backpay liability in the total amount of $875,860.56 (the "Settlement Amount). While the Settlement Agreement did not determine the priority of the Settlement Amount, pursuant to its terms, Debtors agreed that they will not contest or object to the Board's asserted allowance or priorities of the Settlement Amount. A copy of the Settlement Agreement is attached as **Exhibit C** and is made a part hereof.

6. After notice and opportunity for a hearing, on December 22, 2015, this Court entered its Order approving the terms of the Settlement Agreement. [Docket No. 1447]. The Court's Order requires to the Board to amend its Proof of Claim to the amount and priorities asserted in the Settlement Agreement within fourteen (14) days of

entry of the Order. A copy of the Order is attached as **Exhibit D** and is made a part hereof.

7. Simultaneous with this Application, on January 4, 2016, the Board filed its amended Proof of Claim (originally filed on August 24, 2015) [Claim No. 139] (the "NLRB Claim") to reflect the terms of the approved Settlement Agreement. The amended NLRB Claim states a total amount of $875,860.56, asserting $5,817.70 as an allowable administrative expense claim, $24,950.00 as a wage priority claim, and the remainder as a general unsecured claim, including pre-petition interest through January 14, 2015.

8. The total post-petition backpay amount owing by the Debtors to the employees is $5,817.70. An analysis explaining the Board's calculations can be found in the Affidavit of Board Compliance Officer Jenny Dunn, attached hereto as **Exhibit E**.

9. The Board's administrative expense claim is made pursuant to Section 503(b)(1)(A)(ii) of the Bankruptcy Code, which provides in pertinent part:

> (b) After notice and a hearing, there shall be allowed administrative expenses, . . . including—
>
> > (1)(A) the actual, necessary costs and expenses of preserving the estate including— . . .
> >
> > > (ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered.

10. Backpay accruing post-petition represents a priority administrative expense under Section 507(a)(2) of the Bankruptcy Code. *See Yorke v. NLRB*, 709 F.2d

1138, 1142-43 (7th Cir. 1983); *In re Bel Air Chateau Hosp., Inc*., 106 LRRM 2834, 2835 (C.D. Cal. 1980); *In re Brinke Transportation*, 135 LRRM 2769, 2771-73 (D. N.J. 1989).

11. Pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) and 507(a)(2), the post-petition backpay amounts due and owing in the instant case represent priority administrative expenses.

WHEREFORE the Board respectfully moves this Honorable Court to grant the Board's application for allowance and payment of the post-petition administrative expenses accrued by the Debtors in the amount of $5,817.70.

Respectfully submitted,

Dated: January 4, 2016
Washington, D.C.

/s/ Polly Misra
POLLY MISRA, Senior Trial Attorney
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Contempt, Compliance & Special Litigation Branch
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Dated: January 4, 2016
Birmingham, Alabama

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Counsel for National Labor Relations Board

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	Chapter 11
WALTER ENERGY, INC., *et al.*,[1]	Case No. 15-02741-TOM11
Debtors.	Jointly Administered

ORDER GRANTING
NATIONAL LABOR RELATIONS BOARD'S APPLICATION
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES

Upon application by the National Labor Relations Board ("NLRB" or "Board") for allowance and payment of an administrative expense pursuant to 11 U.S.C. § 503(b)(1)(A)(ii) and 507(a)(2), and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the application is **GRANTED** and the Board is awarded an administrative expense in the amount of $5,817.70.

ENTERED

Dated: _____, 2016

_____
TAMARA O. MITCHELL
United States Bankruptcy Judge

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	Chapter 11
WALTER ENERGY, INC., *et al.*,	Case No. 15-02741-TOM11
Debtors.	Jointly Administered

CERTIFICATE OF SERVICE

On January 4, 2016, I caused the following to be served via Electronic Mail upon the service list attached hereto as Exhibit 1, and via First Class Mail upon the service list attached hereto as Exhibit 2:

- **Notice of National Labor Relations Board's Application for Allowance and Payment of Administrative Expenses**
- **National Labor Relations Board's Application for Allowance and Payment of Administrative Expenses**

Respectfully submitted,

Dated: January 4, 2016
Birmingham, Alabama

/s/ Joseph W. Webb
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Counsel for National Labor Relations Board

EXHIBIT 1

Exhibit 1
Master Service List
Served via Electronic Mail

NAME	NOTICE NAME	EMAIL	DESCRIPTION
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Carroll Engineering Company	Attn Greg Wolfe	agw@carrollengineeringco.com	Official Committee of Unsecured Creditors

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Master Service List
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			Trustees; and United Mine Workers of America 2012 Retiree Bonus Account Trust and its Trustees
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Exhibit 1
Master Service List
Served via Electronic Mail

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Master Service List
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			America Cash Deferred Savings Trust of 1988 and its Trustees; and United Mine Workers of America 2012 Retiree Bonus Account Trust and its Trustees
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S. Scott Hickman, Attorney at Law, LLC	S. Scott Hickman	scotthickmanlaw@gmail.com	Counsel to RiverFall Credit Union f.d.b. Tuscaloosa Teachers Credit Union
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Sirote & Permutt, PC	Stephen B. Porterfield	sporterfield@sirote.com	Counsel to Shook and Fletcher Supply Company, Inc.
Spain & Gillon, LLC	Frederick M. Garfield and David S. Maxey	fmg@spain-gillon.com; dsm@spain-gillon.com	Counsel to Jefferson County Department of Health and/or Mark E. Wilson, MD, Health Officer
Spain & Gillon, LLC	Walter F. McArdle	wfm@spain-gillon.com	Counsel to George M. Phillippi
Synchrony Bank	Ramesh Singh	claims@recoverycorp.com	Authorized Agend for Synchrony Bank Assignee for Sam's Club Business Cred

Exhibit 1
Master Service List
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Thompson & Knight LLP	Tye C. Hancock	tye.hancock@tklaw.com	Counsel to Dominion Resources Black Warrior Trust by and through its Trustee Southwest Bank
U.S. Securities and Exchange Commission	Office of Reorganization	atlreorg@sec.gov; sherrill-beards@sec.gov	Securities and Exchange Commission Regional Office
UMB Bank National Association, in its capacity as Indenture Trustee of the 8.5% Notes Due 2021	Attn: Mark Flannagan	Mark.flannagan@umb.com	Official Committee of Unsecured Creditors
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EXHIBIT 2

Exhibit 2
Master Service List
Served via First Class Mail

NAME	NOTICE NAME	ADDRESS1	CITY	STATE	ZIP	DESCRIPTION
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Internal Revenue Service	Centralized Insolvency Operation	2970 Market St	Philadelphia	PA	19104	Internal Revenue Service
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UMWA 1974 Pension Plan	Attn: David W Allen	2121 K St. NW	Washington	DC	20037	Official Committee of Unsecured Creditors
UMWA 1974 Pension Plan	Attn: David W Allen	2121 K St. NW	Washington	DC	20037	Official Committee of Unsecured Creditors
United States Attorney's Office	Northern District of Alabama	1801 4th Avenue North	Birmingham	AL	35203	US Attorney for Northern District of Alabama
United Steelworkers	Attn Michael Smith, District Representative	919 Sharit Avenue, Suite 213	Gardendale	AL	35071	United Steel Workers
United Steelworkers	Attn Michael Smith, District Representative	PO Box 1105	Gardendale	AL	35071-1105	United Steel Workers

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Taft Coal Sales & Associates, Inc. and Walter Energy, Inc. and Walter Minerals, Inc. *and* United Mine Workers of America, District 20. Cases 10–CA–088599 and 10–CA–093022

January 10, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND SCHIFFER

On June 13, 2013, Administrative Law Judge Robert A. Ringler issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Taft Coal Sales & Associates, Inc., Walter Energy, Inc., Walter Minerals, Inc., a single employer, Birmingham, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. January 10, 2014

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Jeffrey D. Williams, Esq., for the Acting General Counsel.
Stephen E. Brown, Esq. (Maynard, Cooper & Gale, PC), for the Respondents.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard in Birmingham, Alabama, on April 23, 2013. The original charge was filed by the United Mine Workers of America, District 20 (the Union) on September 5, 2012.[3] The consolidated complaint (the complaint) alleged, inter alia, that: Walter Energy, Inc. (Walter Energy), Walter Minerals, Inc. (Walter Minerals) and Taft Coal Sales & Associates, Inc. (Taft) constituted a single employer enterprise (the Respondents); and violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by threatening and interrogating employees, and unilaterally laying off workers.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Taft, a corporation, has operated a coal mine in Walker County, Alabama (the Choctaw Mine). Annually, in conducting such operations, it purchases and receives goods valued in excess of $50,000 directly from suppliers outside of Alabama. Based on the foregoing, the Respondents admit, and I find, that Taft is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. They further admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The majority of the controlling facts are undisputed.[4] Walter Energy, a publicly traded Delaware corporation, is a leading

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We note that the Respondent did not assert, as an affirmative defense, that the Board should defer this case while the Union's grievance over the June 27, 2012 layoff at the Choctaw mine is being processed.

We adopt the judge's recommendation of a full reinstatement and backpay remedy, rather than the limited backpay remedy set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). See, e.g., *Plastonics, Inc.*, 312 NLRB 1045 (1993). ("The traditional and appropriate Board remedy for an unlawful unilateral layoff based on legitimate economic concerns includes requiring the payment of full backpay, plus interest, for the duration of the layoff"). Here, the Respondent failed to bargain in good faith with the Union about *both* the decision to lay off unit employees and its effects. We correct the judge's analysis to the extent that it suggests a *Transmarine* remedy would only be applicable if the Respondent had laid off the entire unit. See *KGTV*, 355 NLRB 1283, 1286 (2010).

[3] All dates herein are in 2012, unless otherwise stated.

[4] Unless otherwise explained, factual findings arise from admissions, joint exhibits, stipulations and uncontroverted testimony.

Exhibit A - page 1
Case 15-02741-TOM11 Doc 1537-1 Filed 01/04/16 Entered 01/04/16 12:03:05 Desc Exhibit A (Board Decision) Page 1 of 8

producer of coal. Walter Minerals, a coal mining operation, is a wholly owned subsidiary of Walter Energy. Taft, which is a wholly owned subsidiary of Walter Minerals, operates the Reid School and Choctaw Mines in Birmingham, Alabama.

1. Common corporate leadership

Several key leaders hold simultaneous roles for the Respondents:

	Walter Energy	*Walter Minerals*	*Taft*
Walter Scheller	Chief Executive Officer (CEO) and Director	Director	Director
Charles Stewart	Senior Vice President (Sr. VP), Project Development	President	President
Robert Kerley	VP, Corporate Controller & Chief Accounting Officer	Director	Director
Michael Hurley	VP, Tax	VP, Tax	VP, Tax
Earl Dopplett	Sr. VP, General Counsel & Secretary	Secretary	Secretary
Michael Griffin	Assistant Treas. & Interim Treas.	Asst. Treas.	Asst. Treas.

(Jt. Exh. 2(a).)

2. Labor relations

Steve Dickerson, human resources manager for Walter Minerals,[5] handles labor relations and personnel matters for both Walter Minerals and Taft.[6] See, e.g. (R. Exh. 11). He testified that he is unauthorized to bind Walter Energy concerning labor relations and personnel matters. He added that Walter Energy has no involvement in Taft's day-to-day labor relations or personnel matters. He receives his performance review and direction from Thomas Lynch, senior vice president, human resources at Walter Energy.[7] (Tr. 229.) He also reports to Jan Kizziah, vice president of operations for Walter Minerals. (Tr. 230.)

3. Wages and benefits

Taft's employees receive their paychecks and benefits directly from Taft,[8] which independently sets their wages. Taft's wage, bonus and retirement system differs from Walter Energy's compensation system. Regarding insurance, Lynch testified:

> There's a master corporate policy. It essentially functions as an umbrella policy, where the subsidiaries, including Taft . . . have unique provisions and unique administration in the area of workers' compensation . . . . And the corporation pays the premium under the master policy and then charges back the cost of that to the subsidiary.

(Tr. 169.) Taft independently handles its unemployment insurance.

4. Operations

Lynch testified that Walter Energy has no involvement with Taft's day-to-day operations, personnel matters or labor relations issues. Each entity maintains separate bank accounts and fiscal records. Taft transmits monthly financial reports to Walter Energy. Walter Energy and Taft share a common address and phone number in Birmingham. (Jt. Exh. 2(a).) Walter Minerals has a separate address and phone number, although it is also headquartered in Birmingham. (Id.) Walter Minerals and Walter Energy share an email system and web address. (Jt. Exh. 2(g), (j).)

B. Neutrality Agreement

On December 9, 2011, Walter Energy and the Union agreed that, if the Union attempted to unionize the Choctaw Mine or its other mines, Taft would remain neutral and use a card check procedure to gauge employee support (the Neutrality Agreement). (Jt. Exh. 2(b).) The Neutrality Agreement, however, banned the Union from using it to prove single employer status in the current litigation. Specifically, it stated that:

> Nothing in this MOU, its implementation . . . or the negotiations for the labor agreements . . . shall . . . be . . . offered as evidence . . . to create a . . . single employer . . . relationship between . . . [Walter Energy and the] mining operation.

(Id.)

C. Union's Organizing Drive

In March, the Union began organizing the following bargaining unit (the unit):

> All hourly paid non-supervisory employees [employed by Taft at its Choctaw Mine] . . . , excluding all supervisory employees, coal inspectors, weigh bosses, watchmen, clerks, technical employees and engineering employees.[9]

(GC Exh. 1.)

1. Supervisor Nixon Hill's statements

a. Plant closure allegation

Robert Plunkett, a driver, stated that, in March,[10] he and Hill

[5] The parties stipulated that he is an agent of Walter Minerals, within the meaning of Sec. 2(13) of the Act.

[6] Although the record reveals that Walter Energy acquired Taft in 2008, it is silent regarding how Dickerson of Walter Minerals became responsible for Taft's labor and personnel relations.

[7] The parties stipulated that Lynch is an agent of Walter Energy, within the meaning of Sec. 2(13) of the Act.

[8] Taft has a unique employer ID number, and independently handles payroll taxes. (R Exh. 9.)

[9] There were approximately 90 employees in the unit at that time.

[10] He recalled that he signed a union authorization card on April 5 and placed this conversation roughly 2 weeks earlier. The complaint identified this conversation as occurring on March 22, which is reasonable.

had this exchange:

> He picked me up [in his truck] from dropping off another piece of equipment and we was riding back to my truck and he just said, "I wonder how many people's going to lose their jobs," and I said, "what are you talking about?" He said, "well, they sign that Union in, they'll be a lot of people lose their jobs, and they'll close the mine down." He said, "if you all sign in, they'll close the mine down," and I said, "well, they can't close it down because of Alabama Power owns the coal and they're going to want to get it out." And he said, "they can sure shut it down."

(Tr. 29–30.) (Grammar as in original.)

Hill flatly denied this conversation, and averred that Plunkett's account was implausible because he never would have allowed him to ride in his truck. He added that he and Plunkett had a poor relationship, and suggested that Plunkett's bias likely colored his testimony.

Given that Plunkett testified that Hill threatened him, and Hill denied the threat, I must make a credibility determination. For several reasons, I credit Plunkett. First, he had a credible demeanor; he was consistent and equally helpful on direct and cross examination, and appeared committed to relaying truthful testimony. His testimony was generally consistent with his sworn affidavit. Hill, on the other hand, appeared less than credible. His explanation that Plunkett lied about riding in his truck appeared concocted and implausible. It is also probable that he was concerned that his threat, which violated the Neutrality Agreement, could result in his own disciplinary action, and such anxiety colored his testimony.

b. Interrogation allegation

Joey Jones, another employee, testified that he and Hill had this conversation in the "bathhouse" parking lot:[11]

> He come up . . . at the end of the shift, and I asked him about a day shift job and he told me . . . all the day shift guys voted on the Union. How did you vote? I said I didn't vote.

(Tr. 45–46.) (Grammar as in original.)[12] Hill denied this exchange.

Given that Jones stated that Hill interrogated him, and Hill denied such inquiry, I must make a credibility determination. For several reasons, I credit Jones. First, he had a straightforward and honest demeanor. Second, he was consistent on direct and cross-examination, and consistent with his affidavit. Lastly, as noted, Hill was not credible.

[11] Although the complaint set this exchange on March 22, he recalled it as occurring in May. I find, however, that he was likely confused and will use March 22. Specifically, it is improbable that this discussion, which centered upon the day-shift miners' union votes, occurred in May, given that their votes were previously cast in April. (Jt. Exh. 2(c).)

[12] He acknowledged wearing a union sticker on his hardhat during the campaign, but, reported that Hill did not supervise his shift or likely observe the sticker. Hill solely denied the conversation at issue, and never contended that he was aware that Jones was a union supporter.

2. Voluntary recognition

On April 18, the Union advised Scheller that it had obtained:

> [A] majority of Authorization Cards signed by employees desiring . . . them as their Collective Bargaining Agent at the . . . Choctaw Mine.

(Jt. Exh. 2(c).) On May 24, an arbitrator affirmed their majority status. (Jt. Exh. 2(e).) Since June, the parties have been negotiating a first contract for the unit. (Jt. Exh. 2(g),(l)-(m).)

D. Decreased Coal Demand

At some point, Alabama Power, a major coal purchaser, informed Taft that it would reduce its future purchases.[13] On June 21, Taft amended Alabama Power's coal purchasing agreement to reflect their decreased demand, which resulted in a 125,000-ton cut in coal production at the Choctaw Mine. (Jt. Exhs. 1, 2(h).)

E. Layoffs at the Choctaw Mine

In June, Taft's superintendent, David Peters, and Dickerson decided that the Choctaw Mine's unexpected cut in coal production necessitated a layoff. (Jt. Exh. 1.) On June 25, Lynch informed Union International Vice President Daryl Dewberry, that:[14]

> [T]he Taft/Choctaw mine of Walter Minerals, Inc. has been challenged [by] . . . reduced demand for thermal coal . . . . Alabama Power has reduced the amount of coal it will be purchasing . . . this year by 125,000 tons. Alabama Power has not requested any coal . . . for 2013.
>
> As a result . . . , this week we will be announcing workforce reductions at the mine. A total of 21 represented positions will be eliminated, and [affected] employees . . . will be notified on . . . June 27. Walter Energy continues to have opportunities for experienced surface miners in Northeast British Columbia, and we are planning to . . . discuss these openings the week following notification.
>
> . . . .
>
> Please let me know if you have any questions or would like to discuss these actions in greater detail.

(Jt. Exh. 2(i)); see also (R Exh. 12.)

Dewberry testified that he first learned about the layoff on June 25. He recalled telephoning Dickerson on June 26 and requesting a layoff list. He indicated that, on June 27, Dickerson emailed him this list.[15] (Jt. Exh. 2(j).) He contended that, after reviewing the list, he disappointedly learned that junior miners were retained over qualified senior miners.[16] He stated that this discovery prompted him to telephone Scheller and

[13] This re-evaluation was prompted by the existence of cheaper fuel alternatives (i.e., natural gas), which made coal usage less desirable.

[14] The layoff reduced the unit by roughly 25 percent.

[15] The email contained Walter Energy's logo and website; in addition, Dickerson's email address was associated with Walter Energy (e.g., name@walterenergy.com).

[16] The Union also filed a grievance over the layoff under another labor agreement. (R. Exhs. 1, 13.)

complain, who, in turn, assigned the issue to Lynch. He added that, when he notified Scheller about Hill's plant closure threat and interrogation, he replied that, "if that did take place, he'd fire [him]."[17] (Tr. 64.)

Dickerson mostly corroborated Dewberry's account, but, added that Dewberry never sought bargaining, after being told about the layoff. He stated that the layoff could have been delayed by a couple of days, if the Union had sought to bargain. He admitted, however, that he never told the Union that he would delay the layoff. He indicated that unit employees were selected for layoff on the basis of their skills, seniority, safety practices, and attendance.

Lynch initially denied being involved in the layoff, beyond communicating with the Union. He added, however, that he reviewed the June 25 layoff letter before dispatch. He stated that he became involved in the layoff discussions, after Scheller directed him to respond to Dewberry. Lynch contended that his layoff dealings were excluded from evidentiary usage under the Neutrality Agreement.[18]

F. July 9 Meeting and Correspondence

On July 5, Dewberry sent Lynch a letter, which requested a meeting about the layoffs. (Jt. Exhs. 1, 2(k), 9).) On July 6, Lynch replied:

> We would be happy to take you through the . . . methodology used to select individuals for the workforce reduction. Does Monday, July 9 . . . work for you? . . . . [T]he selections were based on individual skills, with additional considerations given to seniority and age.
>
> . . . .
>
> If you have details on the claim that a mine supervisor told an employee that signing a union card would be damaging to his ongoing employment prospects, I would . . . like to have that claim investigated. Walter Energy, Inc. and its subsidiaries are committed to upholding the . . . Act.

(R. Exh. 6.)

Dewberry testified that, on July 9, he met with Lynch and Dickerson, and protested his ongoing exclusion from the layoff decision-making process. He added that every facet of the layoff was already a fait accompli, by the time he was notified.

Lynch stated that he met with Dewberry on July 9 concerning the layoff. He stated that the meeting was short; he recalled describing Taft's rationale. He added that the Union did not make any proposals regarding the layoff.

G. Closure of Taft's Reid School Mine

In March 2013, the Union and Taft held negotiations over the closure of the Reid School Mine. (R. Exh. 11.) On March 29, 2013, the parties entered into a closure agreement, which was signed by Dickerson. (Id.) This agreement provided, inter alia, that Taft employees could be recalled to open positions at Walter Minerals. (Id.) Following the closure of the Reid School Mine, Taft's mining equipment was shipped to a Walter Minerals jobsite.[19]

III. ANALYSIS

A. Single-Employer Status

1. Applicable law

In *Cimato Brothers, Inc.*, 352 NLRB 797, 798 (2008), the Board held:

> In determining whether two nominally separate employing entities constitute a single employer, the Board examines four factors: (1) common ownership, (2) common management, (3) interrelation of operations, and (4) common control of labor relations. No single factor is controlling, and not all need be present. Rather, single-employer status ultimately depends on all the circumstances. It is characterized by the absence of an arm's-length relationship among seemingly independent companies. *Bolivar-Tees, Inc.*, 349 NLRB 720, 720 (2007); *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283–1284 (2001).

This inquiry assesses whether nominally "separate corporations are not what they appear to be, [and] that in truth they are but divisions or departments of a single enterprise." *NLRB v. Deena Artware, Inc.,* 361 U.S. 398, 402 (1960). Centralized control of labor relations is, generally, considered to be the most important factor in this analysis. See, e.g., *Geo. V. Hamilton, Inc.*, 289 NLRB 1335, 1337 (1988). "[C]ommon ownership, while significant, is not determinative in the absence of centralized control over labor relations." *Mercy Hospital*, supra, 336 NLRB at 1284.

2. Common ownership

Walter Minerals and Taft are wholly owned subsidiaries of Walter Energy. The common ownership factor, consequently, favors single-employer status.

3. Common management

There is strong evidence of common management. Scheller is the CEO and director of Walter Energy, and director of both subsidiaries. Stewart is a senior vice president for Walter Energy, and president of both subsidiaries. Kerley is a senior vice president for Walter Energy, and director of both subsidiaries. Hurley is the senior vice president, tax, and Griffin is the assistant treasurer for all Respondents. Dopplett is the senior vice president for Walter Energy, and the secretary for both subsidiaries. The common management factor, thus, heavily favors single-employer status. See *Pathology Institute*, 320 NLRB 1050 (1996).

[17] Scheller was, without explanation, not called to rebut this testimony.

[18] This argument is unreasonable. First, the Respondents offered voluminous evidence of Lynch's layoff dealings as joint exhibits and during their case-in-chief. These actions, as a result, waived any reasonable objection concerning the admission of Lynch's layoff dealings. Second, evidence regarding Lynch's layoff dealings was not excluded under the Neutrality Agreement, which solely banned usage of evidence concerning, "its implementation . . . or the negotiations for the labor agreements." Lynch's layoff dealings, however, were far afield of this evidentiary ban.

[19] There is no evidence of analogous transactions, or that this transfer was not an "arms-length" deal.

4. Interrelation of operations

There is mixed evidence of interrelated operations, which neither strongly supplements, nor greatly detracts from, single-employer status. Specifically, although Taft and Walter Energy share common addresses, each maintains separate bank accounts and financial records, and, with the exception of labor relations, as will be discussed below, are essentially run independently. While Taft shipped its equipment to Walter Minerals after the Reid School Mine closed, there is no evidence of similar transactions amongst the Respondents, or that this transfer was not an "arms-length" deal. Moreover, even though the Respondents share some common insurance benefits, there is no evidence that any entity pays less than their pro rata share for such benefits, or that such arrangements extend beyond insurance. Each entity has unique tax identification numbers, independently handles payroll taxes, and employs distinct compensation systems. Respondents utilize Walter Energy's email system and website and display its logo on certain communications. Respondents make independent hiring decisions, and, subject to the limited exceptions described below, there is no evidence that employees transfer between Respondents.

5. Common control of labor relations

There is significant evidence that Walter Energy and Walter Minerals exercise common control over Taft's labor relations. Scheller, Lynch, and Dickerson all exercise such control.

Scheller, Walter Energy's top official, heard Dewberry's complaints about Taft's layoff, a significant labor relations issue, and assigned this matter to Lynch. He also entertained Dewberry's complaints about a Taft supervisor's potential labor law violations, and similarly assigned this task to Lynch. He also pledged that, if these allegations were true, he would personally fire the offender. These actions demonstrate a substantial wielding of labor relations power; it is highly significant that Scheller never responded to Dewberry that these matters were outside of his jurisdiction because Taft was an independent entity.

Lynch, Walter Energy's top human resources official, became heavily involved in Taft's labor relations issues, when he notified the Union about Taft's layoff, met with the Union about this matter, and scrutinized the layoff list before its release. He investigated the interrogation and plant closure threat allegations involving a Taft supervisor. Finally, his June 25 layoff letter offered affected Taft employees jobs at Walter Energy's Canadian mining operations. These actions similarly demonstrate a significant exercise of labor relations power over Taft's affairs.

Dickerson, Walter Minerals' top human resources official, handles labor relations issues for Taft and Walter Minerals. He identified who would be laid off, and communicated with the Union about this matter. He negotiated the closure agreement at Taft's Reid School Mine. There is also evidence that his labor relations activities are monitored by Lynch, who reviewed the Taft layoff list, and conducts his performance reviews.

6. Conclusion[20]

Respondents are a single employer. They are commonly owned and managed. Although there is only limited evidence of interrelated operations, there is strong evidence that Walter Energy and Walter Minerals commonly control Taft's labor relations. It is also evident that Walter Energy, via Lynch's supervision of Dickerson, exercises common control over Walter Minerals' labor relations. This centralized control, which is the primary factor in the analysis, strongly favors a single-employer finding regarding all three entities.

B. Unilateral Layoff[21]

Respondents violated Section 8(a)(5), when they unilaterally laid off unit employees at Taft, without notice or bargaining. An economic layoff decision is a mandatory bargaining topic. *McClain E-Z Pack, Inc.,* 342 NLRB 337 (2004); *Toma Metals, Inc*., 342 NLRB 787, 787 fn. 1 (2004). This remains true, even where the entity previously exercised unlimited discretion before unionization. See *Adair Standish Corp*., 292 NLRB 890 fn. 1 (1989), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990). This duty additionally requires bargaining over the layoff's effects. *Toma Metals, Inc*., supra.

The Board has held that "when an employer notifies a union of proposed changes in terms and conditions of employment, it is incumbent upon the union to act with due diligence in requesting bargaining." *Jim Walter Resources*, 289 NLRB 1441, 1442 (1988). To establish waiver of a statutory right to bargain over mandatory subjects, there must be a clear and unmistakable relinquishment. *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 702 (1983). A waiver can be gleaned from: express contract language; or conduct (i.e., past practice, bargaining history, action or inaction). *American Diamond Tool*, 306 NLRB 570 (1992). A party asserting waiver has the burden of establishing its existence. *Pertec Computer*, 284 NLRB 810 (1987).

Good-faith bargaining requires timely notice and a meaningful opportunity to bargain. No impasse is, accordingly, possible when an employer presents a union with a "fait accompli" regarding a mandatory bargaining topic. *Dorsey Trailers*, *Inc.*, 327 NLRB 835, 858 (1999), enfd. granted in part and denied in part 233 F.3d 831 (4th Cir. 2000). The Board has further held that:

> To be timely, the notice must be given sufficiently in advance of the actual implementation of the change to allow a reasonable opportunity to bargain. However, if the notice is too short a time before implementation or because the employer has no intention of changing its mind, then the notice is nothing more than a fait accompli.

Ciba-Geigy Pharmaceutical Division, 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983); see also *Toma*

[20] In making this finding, no reliance was placed on the Neutrality Agreement, which precluded usage of "[its terms,] its implementation, its execution, the discussions leading up to its execution, or the negotiations for the labor agreements" in finding single employer status. See (Jt. Exh. 2(b).)

[21] These allegations are listed under pars. 12 and 14 of the complaint.

Metals, Inc., supra, 342 NLRB at 787 fn. 1 (announcement of layoffs on implementation date is unlawful).

In the instant case, Lynch advised the Union, on June 25, that Taft was eliminating 21 unit positions on June 27. When Dewberry asked Dickerson to supply him with a layoff list on June 26, Dickerson declined and advised him that he would release the list, after affected employees were first advised on June 27. Under these circumstances, the Union was presented with a fait accompli, which precluded meaningful pre-implementation bargaining. Respondents unilaterally decided to conduct the layoff, identified who would be laid off, and determined what transfer opportunities would be allocated to affected miners, without offering the Union any opportunity to bargain over these matters. Simply put, the Union was not even told who would be laid off, until after the layoff was enacted. Such unilateral action was unlawful.

C. Threat and Interrogation Allegations[22]

1. Threat

Hill violated Section 8(a)(1), when he advised Plunkett that, "they'll close the mine down," if employees unionized. An employer violates Section 8(a)(1) when it engages in conduct that might reasonably tend to interfere with employees' Section 7 rights. *American Freightways Co.*, 124 NLRB 146 (1959). This includes plant closure threats in retaliation for engaging in union activity. *Mid-South Drywall Co.,* 339 NLRB 480 (2003).

2. Interrogation[23]

Hill unlawfully interrogated Jones, when he asked him whether he voted for the Union. In *Westwood Healthcare Center*, 330 NLRB 935 (2000), the Board held that the following factors determine whether an interrogation is unlawful:

> (1) The background, i.e. is there a history of employer hostility and discrimination?
>
> (2) The nature of the information sought, e.g., did the interrogator appear to be seeking information on which to base taking action against individual employees?
>
> (3) The identity of the questioner, i.e. how high was he in the company hierarchy?
>
> (4) Place and method of interrogation, e.g. was employee called from work to the boss's office? Was there an atmosphere of unnatural formality?
>
> (5) Truthfulness of the reply.

Id. at 939. In applying these factors, however, the Board concluded that:

> In the final analysis, our task is to determine whether under all the circumstances the questioning at issue would reasonably tend to coerce the employee at whom it is directed so that he or she would feel restrained from exercising rights protected by Section 7 of the Act.

Id. at 940.

Hill, a supervisor, tied his query about whether Jones voted for the Union to Jones' question about whether he might be awarded a coveted day-shift position. Under these circumstances, Hill's interrogation left Jones with the very reasonable and strong impression that his union support, if any, would deeply prejudice his ability to obtain the day-shift position. This interrogation was, therefore, unlawful.

CONCLUSIONS OF LAW

1. Walter Energy, Walter Minerals, and Taft are a single employer, and are jointly and severally liable for the violations of the Act found herein.

2. Walter Energy, Walter Minerals, and Taft are individually, and as a single employer, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union is, and, at all material times, was the exclusive bargaining representative for the following appropriate unit:

> All hourly paid non-supervisory employees employed by the Respondents at the Choctaw Mine, excluding all coal inspectors, weigh bosses, watchmen, clerks, technical employees, engineering employees, and all guards and supervisors as defined by the Act.

5. Respondents violated Section 8(a)(1) of the Act by:

a. Interrogating employees about their Union or other protected concerted activities.

b. Threatening to close the Choctaw Mine, if employees selected the Union as their collective-bargaining representative.

6. Respondents violated Section 8(a)(1) and (5) of the Act by failing to bargain in good faith with the Union concerning the June 27 layoff at the Choctaw Mine.

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

REMEDY[24]

Having found that Respondents committed unfair labor practices, they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Since Respondents violated Section 8(a)(5) by unilaterally laying off 21 unit employees at the Choctaw Mine on June 27, they must offer those employees immediate and full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights. Respondents shall also make whole

[22] These allegations are listed under pars. 8 and 13 of the complaint.

[23] Respondents' assertion that this allegation is precluded under Sec. 10(b) is meritless. The interrogation occurred on March 22, which is less than 6 months before the September 5 filing of the charge.

[24] Counsel for the Acting General Counsel's request for a remedy under *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), in his posthearing brief is denied. A *Transmarine* remedy would be warranted, for example, if Taft announced on June 27 that it was closing the Choctaw Mine and unilaterally laying off the entire unit, which was not done. See, e.g., *Piggly Wiggly Midwest, LLC*, 357 NLRB No. 191 (2012). In the instant case, however, the June 27 layoff reduced the unit by 25 percent and Taft continued to operate the Choctaw Mine. As a result, the Board's traditional make-whole remedy is appropriate. See *Toma Metals*, supra.

these employees for any loss of earnings and other benefits they may have suffered by reason of their unilateral action. Backpay shall be computed on a quarterly basis from the date of their layoffs to the date of their proper offers of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily under *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Respondents shall also file a report with the Social Security Administration, which allocates backpay to the appropriate calendar quarters. *Latino Express, Inc.*, 359 NLRB No. 44 (2012). They shall also compensate affected employees for any adverse tax consequences associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year. Id.

In addition to the traditional physical posting of paper notices, Respondents will distribute remedial notices electronically via email, intranet, internet, or other appropriate electronic means to their employees, if they customarily communicate with workers in this manner. See *J Picini Flooring*, 356 NLRB No. 9 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[25]

ORDER

The Respondents, Taft Coal Sales & Associates, Inc. and Walter Energy, Inc. and Walter Minerals, Inc. Birmingham, Alabama, a single employer enterprise, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that mining operations will close, if they engage in union or other protected concerted activities.

(b) Interrogating employees about their union or other protected activities.

(c) Laying off employees, without notifying the Union, or affording it an opportunity to negotiate over the decision or the effects upon this appropriate bargaining unit:

> All hourly paid nonsupervisory employees employed by Respondents at the Choctaw Mine in Birmingham, Alabama, excluding all coal inspectors, weigh bosses, watchmen, clerks, technical employees, engineering employees, and all guards and supervisors as defined by the Act.

(d) 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 necessary to effectuate the policies of the Act.

(a) On request, bargain collectively in good faith with the Union as the exclusive representative of employees in the above-described unit concerning its decision to lay off employees at the Choctaw Mine, as well as the effects of this decision, embody any resulting understanding in a signed agreement and, thereafter, comply with the terms of such agreement.

(b) Within 14 days from the date of the Board's order, offer the 21 employees, who were laid off at the Choctaw Mine on June 27, 2012, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make the 21 affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral action against them, in the manner set forth in the remedy section of this decision.

(d) File a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for the 21 affected employees.

(e) Compensate the 21 affected employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, 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 backpay amounts due under the terms of this Order.

(g) Within 14 days after service by the Region, physically post at each of its Walter Energy, Walter Minerals, and Taft facilities in Birmingham, Alabama, and electronically send and post via email, intranet, internet, or other electronic means to unit employees, who were employed at its Choctaw Mine facility in Birmingham at any time since March 22, 2012, copies of the attached notice marked "Appendix."[26] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondents' authorized representative, shall be physically posted by Respondents and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, any of the Respondents has gone out of business or closed the facilities involved in these proceedings, Respondents shall duplicate and mail, at their own expense, a copy of the Notice to all current employees and former employees employed by it at the Choctaw Mine facility at any time since March 22, 2012.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that it has taken to comply.

Dated, Washington, D.C. June 13, 2013

[25] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[26] If 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

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you that our mining operations will close, if you support the United Mine Workers of America, District 20 (the Union), or any other union.

WE WILL NOT interrogate you about your union activities.

WE WILL NOT fail or refuse to bargain in good faith with the Union, as the exclusive collective-bargaining representative of employees in the bargaining unit described below, by laying off employees at the Choctaw Mine without prior notice to the Union or affording it an opportunity to bargain concerning the layoff and its effects on unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL, on request, bargain collectively in good faith with the Union as the exclusive representative of employees in the following appropriate unit concerning our decision, and the effects of our decision, to lay off employees, and, thereafter, comply with the terms of such agreement:

> All hourly paid nonsupervisory employees employed at Taft's Choctaw Mine in Birmingham, Alabama, excluding all coal inspectors, weigh bosses, watchmen, clerks, technical employees, engineering employees, and all guards and supervisors as defined by the Act.

WE WILL within 14 days from the date of the Board's order, offer the 21 employees, who were laid off at the Choctaw Mine on June 27, 2012, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make the 21 affected employees whole for any loss of earnings and other benefits suffered as a result of our unlawful action against them, with interest.

WE WILL file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for the 21 affected employees.

WE WILL compensate the 21 affected employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than 1 year.

TAFT COAL SALES & ASSOCIATES, INC. AND WALTER ENERGY, INC. AND WALTER MINERALS, INC.

586 Fed.Appx. 525
This case was not selected for publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S. Ct. of App. 11th Cir. Rule 36-2.
United States Court of Appeals,
Eleventh Circuit.

TAFT COAL SALES & ASSOCIATES, INC., Walter Energy, Inc., and Walter Minerals, Inc., Petitioners/Cross–Respondents,
v.
NATIONAL LABOR RELATIONS BOARD, Respondent/Cross–Petitioner.

No. 14–10618 | Non–Argument Calendar. | Oct. 2, 2014.

Synopsis

Background: Nominally separate employing entities petitioned for review of order of National Labor Relations Board (NLRB), which found that entities were single employer and violated National Labor Relations Act (NLRA) by failing to bargain in good faith with union about a layoff and its effects. NLRB cross-applied for enforcement of order.

Holdings: The Court of Appeals held that:

[1] substantial evidence supported finding that entities were single employer, and

[2] substantial evidence supported finding that employer violated NLRA; and

[3] NLRB acted within its remedial authority in ordering employer to reinstate laid-off employees and provide full backpay to them.

Review denied, enforcement granted.

West Headnotes (4)

[1] **Labor and Employment**
Status of employer in general

In proceeding to determine whether employer violated duty to bargain with union in good faith, National Labor Relations Board (NLRB) finding that nominally separate employing entities had common management, weighing in favor of finding they were single employer, was supported by substantial evidence, including corporate summary sheets showing that entities shared a significant number of common directors and officers. National Labor Relations Act, § 10(e), 18 U.S.C.A. § 160(e).

Cases that cite this headnote

[2] **Labor and Employment**
Status of employer in general

In proceeding to determine whether employer violated duty to bargain with union in good faith, National Labor Relations Board (NLRB) finding that grandparent and parent companies exercised common control over subsidiary's labor relations, weighing in favor of finding that companies were single employer, was supported by substantial evidence, including that grandparent and parent companies' executives or officers acted on subsidiary's human resources and labor issues, including layoff. National Labor Relations Act, § 10(e), 18 U.S.C.A. § 160(e).

Cases that cite this headnote

[3] **Labor and Employment**
Layoff

National Labor Relations Board (NLRB) finding that employer violated National Labor Relations Act (NLRA) by failing to bargain in good faith with union about a layoff and its effects was supported by substantial evidence, including that employer notified union about the planned layoff just two days before the layoff and union did not receive list of affected employees until after layoff. National Labor Relations Act, § 10(e), 18 U.S.C.A. § 160(e).

Cases that cite this headnote

[4] **Labor and Employment**
Grounds and persons entitled in general

National Labor Relations Board (NLRB) acted within its remedial authority in ordering employer to reinstate laid-off employees and provide full backpay to them, where NLRB found that employer violated National Labor Relations Act (NLRA) by failing to bargain in good faith with union about a layoff and its effects. National Labor Relations Act, § 10(c), 29 U.S.C.A. § 160(c).

Cases that cite this headnote

Attorneys and Law Firms

***526** Stephen Edward Brown, Matthew I. Penfield, Bressler Amery & Ross, PC, Birmingham, AL, for Petitioner–Cross Respondents.

Linda Dreeben, Jill A. Griffin, Washington, DC, Laura P. Karr, Triangle, VA, Jeffrey D. Williams, Atlanta, GA, for Respondent–Cross Petitioner.

Petitions for Review of a Decision of the National Labor Relations Board. Agency Nos. 10–CA–088599; 10–CA–093022.

Before WILSON, ROSENBAUM and DUBINA, Circuit Judges.

Opinion

PER CURIAM:

This case involves a petition for review and cross-application for enforcement of an order of the National Labor Relations Board. *See Taft Coal Sales & Associates,* 360 N.L.R.B. No. 19, 198 L.R.R.M. (BNA) 1181 (Jan. 10, 2014). After a complete review of the record, we deny the petition for review and grant the application for enforcement.

Petitioners Taft Coal Sales & Associates, Inc., Walter Energy, Inc., and Walter Materials, Inc. raise three issues for review. Two relate to the factual findings of the Board: (1) Petitioners constitute a single employer, and (2) Petitioners violated section 8(a)(5) of the National Labor Relations Act by failing to bargain in good faith with the United Mine Workers of America, District 20 (the Union) about a layoff and its effects. The third concerns the propriety of the Board's remedy: reinstatement and back pay for the laid-off employees. We address each issue in turn.

I.

Petitioners first challenge the Board's finding that they constitute a single employer.

We review the Board's factual findings to ensure that they are supported by substantial evidence given the totality of the record. 29 U.S.C. § 160(e); *NLRB v. U.S. Postal Serv.*, 529 F.3d 729, 732 (11th Cir.2008). Substantial evidence means more than a scintilla. *NLRB v. Contemporary Cars, Inc.*, 667 F.3d 1364, 1370 (11th Cir.2012). It means enough "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (quoting *Bickerstaff Clay Prods. Co. v. NLRB*, 871 F.2d 980, 984 (11th Cir.1989)) (internal quotation mark omitted). Where the Board draws plausible inferences from the record, "we will not overturn its determinations, even if we would have made different findings upon a *de novo* review of the evidence." *Cooper/T. Smith, Inc. v. NLRB*, 177 F.3d 1259, 1261 (11th Cir.1999). Nevertheless, "the Board cannot ignore relevant evidence that detracts from its findings because such evasion detracts from a finding of substantial evidence." *NLRB v. Triple A Fire Prot., Inc.*, 136 F.3d 727, 734 (11th Cir.1998).

To determine whether nominally separate employing entities constitute a single employer, the Board considers four factors: "(1) common ownership, (2) common ***527** management, (3) interrelation of operations, and (4) common control of labor relations." *Kings Fire Prot., Inc.*, 358 N.L.R.B. No. 156, 194 L.R.R.M. (BNA) 1455 (Sept. 27, 2012); *see also Lyes v. City of Riviera Beach, Fla.*, 166 F.3d 1332, 1341 (11th Cir.1999) (en banc) (recognizing the four factors of the so-called "NLRB test" for single-employer status). Because no factor is controlling and all need not be present, single-employer status turns on case-specific facts and "is characterized as an absence of an 'arm's length relationship found among unintegrated companies.' " *Int'l Bhd. of Elec. Workers, Local 613 v. Fowler Indus., Inc.*, 884 F.2d 551, 553 n. 3 (11th Cir.1989) (quoting *NLRB v. Don Burgess Constr. Corp.*, 596 F.2d 378, 384 (9th Cir.1979)).

A.

Petitioners concede common ownership. Their companies have a familial relationship. Walter Energy is the parent company of Walter Materials, a wholly owned subsidiary. Taft Coal in turn is a wholly owned subsidiary of Walter Materials—the grandsubsidary of Walter Energy. The issues here center on a layoff of 21 employees at Taft Coal's surface-mining operation—the Choctaw Mine—in Walker County, Alabama.

B.

[1] Petitioners challenge the Board's finding of common management. In their view, this finding is supported only by the corporate summary sheets—joint exhibits submitted during the hearing before the administrative law judge solely for corporate identity and jurisdictional purposes. But whatever their purpose, these exhibits were part of the record before the Board. And given that Petitioners share a significant number of common directors and officers, we will not disturb the Board's plausible inference of common management.

C.

Petitioners contend that the evidence on the third factor—interrelation of operations—overwhelmingly establishes that the day-to-day operations of Walter Energy, Walter Materials, and Taft Coal are independent. To be sure, the record lacks substantial evidence of interrelated operations. But this is consistent with the Board's finding that "although Taft [Coal] and Walter Energy share common addresses, each maintains separate bank account and financial records, and, with the exception of labor relations, ... *are essentially run independently*." *Taft Coal Sales*, 360 N.L.R.B. No. 19 at 5 (emphasis added).

At bottom, Petitioners disagree with the weight given to this factor. The Board decided that it "neither strongly supplements, nor greatly detracts from" a finding of single-employer status. Petitioners contend that it weighs heavily against such a finding. Because we conclude that the Board's finding of common control of labor relations is supported by substantial evidence, we need not focus further on this factor, which is neither controlling nor required. *See Fowler Indus.*, 884 F.2d at 553 n. 3; *accord Mercy Hosp. of Buffalo*, 336 N.L.R.B. 1282, 1284 (2001) ("A single employer relationship will be found only if one of the entities exercises actual or active control over the day-to-day operations or labor relations of the other.").

D.

[2] Petitioners also challenge the Board's finding that Walter Energy and Walter Materials exercise common control over Taft Coal's labor relations. To support its finding, the Board focused on the ***528** labor-relations activities of three employees:

> • Walter Scheller, Walter Energy's chief executive officer and co-director (with Robert Kerley, Walter Energy's vice president, corporate controller and chief accounting officer) of both Walter Materials and Taft Coal;
>
> • Thomas Lynch, Walter Energy's senior vice president of human resources; and
>
> • Steve Dickerson, Walter Materials' head of human resources, who handles human-resources and labor-relations issues for Taft Coal; Dickerson reports to and receives his performance reviews from Lynch at Walter Energy.

See Taft Coal Sales, 360 N.L.R.B. No. 19 at 5.

The Board's finding is supported by substantial evidence. To begin, Walter Materials controls labor relations at Taft Coal. Petitioners emphasize Dickerson's testimony was that Taft Coal sets its own labor-relations and human-resources policy and makes day-to-day decisions in these areas without Walter Energy's involvement. Indeed, Dickerson testified about his role as director of human resources for Taft Coal and his involvement in Taft Coal's labor-relations issues. Petitioners, however, ignore that Dickerson works for Walter Materials, not Taft Coal. His testimony is thus substantial evidence in support of the Board's finding that Walter Materials exercises common control over Taft Coal's labor relations.

Turning to Walter Energy, we conclude that substantial evidence exists that it exercises common control over Taft Coal's labor relations through Scheller and Lynch, especially for the labor-relations issue at stake here: the layoff of 21 employees at Taft Coal's Choctaw Mine. Our discussion of each executive's involvement begins with Scheller.

Following the Choctaw Mine layoff, the Union's chief representative, Daryl Dewberry, called Scheller to discuss the Union's issues with the layoff. Instead of informing

Dewberry that the Union's layoff-related concerns should be addressed to someone at Taft Coal or Dickerson at Walter Materials, Scheller referred these issues to Walter Energy's senior vice president of human resources, Lynch.[1]

Lynch's layoff-related actions were significant. He notified the Union about the Choctaw Mine layoff—not one of Taft Coal's officers or Dickerson, Walter Materials' head of human resources who handles human resources for Taft Coal. In his layoff notice, Lynch explained that affected employees would be offered a chance to join Walter Energy's Canadian mining operation. He (and Dickerson) met with the Union after the layoff to discuss how Taft Coal decided which employees to lay off. Finally, he monitors Dickerson's labor-relations ***529** activities and provides his yearly performance review.

Unlike with Walter Materials, the evidence of Walter Energy's common control over Taft Coal's labor relations is not overwhelming, but it is enough to satisfy highly deferential substantial-evidence standard of review. Put differently, Walter Energy's control over Taft Coal's labor relations is supported by more than a scintilla of evidence. We thus leave the Board's finding on this factor in place.

II.

[3] Petitioners next challenge the Board's finding that they violated section 8(a)(5) of the Act.[2] Here, too, our review is limited to ensuring that this finding is supported by substantial evidence given the whole record. 29 U.S.C. § 160(e); *U.S. Postal Serv.*, 529 F.3d at 732.

The events leading up to the layoff that underlies Petitioners' section 8(a)(5) violation are largely undisputed. In early June, Alabama Power, a major coal purchaser, notified Taft Coal that it would reduce its future purchases in light of cheaper fuel alternatives. On June 21, Taft Coal amended Alabama Power's coal purchasing agreement to account for the company's decreased demand. As a result, coal production at the Choctaw Mine was expected to drop by 125,000 tons during the second half of 2012. Given the projected decline in production, Taft Coal decided to eliminate 21 positions at the mine effective June 27.

On June 25, Lynch notified the Union about Alabama Power's decision to significantly scale back its coal purchases. After outlining the change in circumstances, Lynch announced that 21 Choctaw Mine employees would be laid off on June 27 and explained that the affected employees would be notified the following week about Walter Energy's continuing need for experienced surface miners in Canada. To be precise, he declared:

> this week we will be announcing workforce reductions at the [Choctaw Mine]. A total of 21 represented positions will be eliminated, and [affected] employees ... will be notified on ... June 27. Walter Energy continues to have opportunities for experienced surface miners in Northeast British Columbia, and we are planning to ... discuss these openings the week following notification.
>
> Please let me know if you have any questions or would like to discuss these actions in greater detail.

Taft Coal Sales, 360 N.L.R.B. No. 19 at 3.

The next day, Dewberry called Dickerson at Walter Materials. After confirming the substance of Lynch's letter, Dewberry asked for a list of affected employees. And after the affected employees were notified the following day, he received the list from Dickerson.

***530** Given these facts, the Board found that there had been a unilateral layoff. Specifically, the Board concluded that

> the Union was presented with a *fait accompli*, which precluded meaningful pre-implementation bargaining. [Petitioners] unilaterally decided to conduct the layoff, identified who would be laid off, and determined what transfer opportunities would be allocated to affected miners, without offering the Union any opportunity to bargain over these matters.... Such unilateral action was unlawful.

Id. at 6.

The Board's finding is supported by substantial evidence. The Union learned about the planned layoff and the transfer opportunities that would be offered to affected miners in the same paragraph of Lynch's June 25 letter—just two days before the layoff. Lynch's language is as clear as it is certain. He tells the Union that

- "we *will be announcing* workforce reductions" this week;
- "21 represented positions *will be eliminated* ";
- affected "employees ... *will be notified* on ... June 27"; and

> • "we *are planning to* ... discuss [Walter Energy's continuing opportunities for experienced surface miners in Northeast British Columbia] the week following notification."

Id. at 3 (emphasis added). Additionally, the Union did not receive the list of affected employees until after the layoff.

Ignoring the operative language of Lynch's letter, and to prove that the layoff was not a *fait accompli*, Petitioners lean heavily on the letter's closing: "Please let me know if you have any questions or would like to discuss these actions in greater detail." Treating this as genuine invitation rather than a perfunctory closing, Petitioners point out that the Union neither asked to delay the layoff nor pursued any bargaining about the layoff procedure;[3] instead, the Union merely requested a list of affected employees and the chance to discuss the layoff after reviewing the list. Both requests, as Petitioners note, were honored. Petitioners thus conclude that they clearly neither failed nor refused to bargain with the Union.

Yet even if Lynch's final line can withstand the strain that Petitioners place on it, this does not negate the other evidence of a *fait accompli.* And we must uphold the Board's finding even where reasonable Board members or jurists, viewing the evidence in the first instance, could reach different conclusions. *See Contemporary Cars,* 667 F.3d at 1370. At best, the evidence Petitioners marshal calls into question whether the layoff was a *fait accompli.* But this evidence—which did not evade the Board's review—does not render the conclusion that the layoff was a *fait accompli* one that no reasonable person could draw. As a result, we leave the Board's finding undisturbed.

Also, by presenting the Union with a *fait accompli,* Petitioners cannot now argue that they timely gave notice or that the Union waived its right to decisional bargaining by not demanding that the parties engage in a charade. *See NLRB v. Crystal Springs Shirt Corp.,* 637 F.2d 399, 402 (5th Cir. Unit A Feb.1981) ("Notice of a *fait accompli* is simply not the sort of timely notice upon which the waiver defense ***531** is predicated." (quoting *Int'l Ladies Garment Workers Union v. NLRB,* 463 F.2d 907, 919 (D.C.Cir.1972)) (internal quotation mark omitted)).

III.

Lastly, Petitioners challenge the Board's order requiring reinstatement and backpay for the laid-off employees.

Section 10(c) of the Act grants the Board broad remedial power to address unfair labor practices, including requiring the "reinstatement of employees with or without back pay." 29 U.S.C. § 160(c). "Because of its special expertise, the Board is afforded broad discretion in formulating remedies that will further the purposes of the Act." *Mead Corp. v. NLRB,* 697 F.2d 1013, 1022 (11th Cir.1983). For this reason, "the remedy chosen by the Board must be 'given special respect by reviewing courts.' " *NLRB v. Imperial House Condo., Inc.,* 831 F.2d 999, 1006 (11th Cir.1987) (alteration omitted) (quoting *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 612 n. 32, 89 S.Ct. 1918, 1939 n. 32, 23 L.Ed.2d 547 (1969)). Indeed, because our review "is very limited," *Mead Corp.,* 697 F.2d at 1022, the Board's remedial order will be enforced "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act," *Fibreboard Paper Prods. Corp. v. NLRB,* 379 U.S. 203, 216, 85 S.Ct. 398, 406, 13 L.Ed.2d 233 (1964) (quoting *Va. Elec. & Power Co. v. NLRB,* 319 U.S. 533, 540, 63 S.Ct. 1214, 1218, 87 L.Ed. 1568 (1943)).

[4] Here, the Board found that Petitioners violated section 8(a)(5) of the Act by "fail[ing] to bargain in good faith with the Union about *both* the decision to lay off unit employees and its effects." *Taft Coal Sales,* 360 N.L.R.B. No. 19 at 1 n. 2. Given these findings, which we leave in effect, the Board's remedial order—requiring reinstatement and full back pay—is common. *See Plastonics, Inc.,* 312 NLRB 1045, 1045 (1993) ("The traditional and appropriate Board remedy for an unlawful unilateral layoff based on legitimate economic concerns includes requiring the payment of full backpay, plus interest, for the duration of the layoff."); *see also Adair Standish Corp.,* 292 N.L.R.B. 890, 890 n. 1 (1989). Under these circumstances and our limited review, we cannot say that the Board abused its considerable remedial authority in this case.

PETITION FOR REVIEW DENIED; CROSS–APPLICATION FOR ENFORCEMENT GRANTED.

All Citations

586 Fed.Appx. 525, 201 L.R.R.M. (BNA) 3002, 164 Lab.Cas. P 10,720

Footnotes

1 During his June 27 call to Scheller, Dewberry also discussed an allegation that a Taft Coal supervisor had threatened closure of the Choctaw Mine if the Union's organizing efforts were successful. As Petitioners note, Scheller was the

proper party for Dewberry to contact about this given the neutrality agreement between Walter Energy and the Union. Scheller's response to the supervisor's alleged misconduct was unequivocal: if it happened, he would fire the supervisor. *Taft Coal Sales,* 360 N.L.R.B. No. 19 at 4. That the CEO of a publicly traded, multinational corporation would personally fire a mine supervisor at Taft Coal, a grandsubsidary of Walter Energy, suggests Scheller's involvement with labor relations at Taft Coal.

Additionally, Walter Energy's obligations under the neutrality agreement do not include resolving the Union's issues with the June 27 layoff at the Choctaw Mine. Scheller, in his capacity as Walter Energy's CEO, could have declined to entertain or address the Union's layoff-related issues and directed Dewberry to contact someone at Taft Coal or Dickerson at Walter Materials. But he did not.

2 In their reply brief, Petitioners posit that we must first wrestle with whether a so-called "economic layoff" is a mandatory bargaining issue under section 8(d) of the Act. Petitioners did not raise or even mention this issue in the portion of their opening brief on the section 8(a)(5) violation. They do however summarily conclude that decision bargaining was not required in one paragraph on page three of their six-page challenge to the Board's remedy. This buried, conclusory reference is not enough to preserve Petitioners' right to present an argument on this issue in their reply brief. *See Sapuppo v. Allstate Floridian Ins. Co.,* 739 F.3d 678, 680–83 (11th Cir.2014) (discussion various ways issue can be waived on appeal). Accordingly, we decline to consider this issue here. *See Starship Enters. of Atlanta v. Coweta County, Ga.,* 708 F.3d 1243, 1254 (11th Cir.2013) ("We do not consider the argument because Starship failed to present the argument in its opening brief. That it raised it in its reply brief will not suffice.").

3 Dickerson testified that Taft Coal was prepared to negotiate or delay the layoff had the Union made such a request.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, BIRMINGHAM RESIDENT OFFICE

TAFT COAL SALES & ASSOCIATES, INC.

and

Cases 10-CA-088599
10-CA-093022

WALTER MINERALS, INC.

and

UNITED MINE WORKERS OF AMERICA,
DISTRICT 20

COMPLIANCE AGREEMENT

It is hereby stipulated and agreed to by and between Taft Coal Sales & Associates, Inc., Walter Minerals, Inc. (Respondent), the United Mine Workers of America, District 20 (Charging Party), and Region 10 of the National Labor Relations Board (Region 10) as follows:

1. On January 10, 2014, the National Labor Relations Board (Board) issued a Decision and Order in the above cases, reported at 360 NLRB No. 19, finding that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). Specifically, the Board Order requires, *inter alia*, that Respondent take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer the 21 employees, who were laid off at the Choctaw Mine on June 27, 2012, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the 21 affected employees whole for any loss of earnings and other benefits suffered as a result of the unilateral action against them, in the manner set forth in the remedy section of this decision.

(c) File a report with the Social Security Administration allocating backpay to the appropriate calendar quarters for the 21 affected employees.

(d) Compensate the 21 affected employees for the adverse tax consequences, if any, associated with receiving one or more lump-sum backpay awards covering periods longer than one year.

(e) Physically post at each of its Walter Energy, Walter Minerals, and Taft facilities in Birmingham, Alabama, and electronically send and post via email, intranet, internet, or other electronic means to unit employees, who were employed at its Choctaw Mine facility in Birmingham at any time since March 22, 2012, copies of an approved Notice.

2. On October 2, 2014, the U.S. Court of Appeals for the Eleventh Circuit issued its Judgment (unpublished, reported at 586 Fed.Appx. 525), enforcing the Board Order in full.

3. Respondent has satisfied its reinstatement and Notice posting obligations pursuant to the Board Order (items 1(a) and 1(e) above).

4. On June 30, 2015, the Regional Director for Region 10 issued a compliance specification liquidating backpay liability due under the Board Order, as enforced. On August 10, 2015, the Regional Director issued an amended compliance specification to reflect subsequently acquired additional information relevant to the backpay calculation. A hearing on the issue of backpay liability is scheduled to begin on October 5, 2015, in Birmingham, Alabama.

5. On July 15, 2015, Respondent filed a voluntary petition for Chapter 11 bankruptcy relief with the United States Bankruptcy Court for the Northern District of Alabama (*In re Walter Energy Inc., et al.,* Case 15-02741-TOM11).

6. On August 24, 2015, Region 10 filed a Proof of Claim (Claim No. 38) in the bankruptcy proceeding, in the total amount of $1,096,181.50, claiming administrative expenses of $7,023.04; wage priority claims of $73,038.94; and general unsecured claims, including interest through January 14, 2015, of $1,016,119.52.

7. In lieu of further litigation and in full and complete resolution of all backpay and other monetary obligations arising from the court-enforced Board Order, Respondent agrees that it owes a total of $875,860.56 ("the Settlement Amount") in settlement of the Region's backpay claim in this matter. Attachment A, which was prepared by Region 10 and is being attached to further explain the details underlying this settlement, includes Region 10's assertions as to amounts and dates of back pay and related accruals and how the settlement should be treated by the Bankruptcy Court. More specifically Region 10 asserts $5,817.70 is allowable as an administrative expense claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code and $24,950 is allowable as a wage priority under section 507(a)(4) of the Bankruptcy Code. While Respondent agrees that it will not contest or object to the allowance of the Board's claims or priorities, as asserted on Attachment A and as the Board represents it will assert in a request for administrative expenses, Respondent neither agrees nor disagrees as to the propriety or accuracy of the Administrative and/or Wage Priorities claimed by Region 10. To the extent those portions of the Settlement Amount claimed as an administrative expense claim or a wage priority claim as set forth above are not allowed by the Bankruptcy Court, they may be allowed as a general unsecured claim.[1]

8. This Compliance Agreement settles the only remaining issues (i.e., the backpay amounts due) in the above-captioned cases. By approving this Agreement, the Regional Director withdraws the amended compliance specification and notice of hearing previously issued, and Respondent withdraws any answer it filed in response.

[1] Any check issued by the Bankruptcy estate to pay the Agency's claim will be payable to the National Labor Relations Board.

9. This Compliance Agreement, along with its Attachment A, shall constitute the entire agreement between the parties concerning the backpay issue, there being no agreement of any kind, verbal or otherwise, that varies, alters or adds to it.

10. If the Charging Party fails or refuses to become a party to this Compliance Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the Compliance Agreement and decline to reissue a Compliance Specification in this matter. If that occurs, this Agreement shall be between the Respondent and the undersigned Regional Director. In that case, the Charging Party may request review of the Regional Director's decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement will be of no legal consequence and the underlying compliance dispute will return to the Regional Director for further proceedings.

11. Counsel for the Respondent agrees to submit this Compliance Agreement for approval to the Bankruptcy Court within one month of notification by the Regional Director that the Agreement has been approved by the Regional Director and/or that the General Counsel has sustained the Regional Director's approval over the Charging Party's appeal. If the Bankruptcy Court rejects or otherwise does not approve this Compliance Agreement, this Compliance Agreement will no longer be binding on the parties and will be of no legal consequence and the underlying compliance dispute will return to the Regional Director for further proceedings.

12. Respondent agrees that in the case of non-compliance with any of the terms of the Compliance Agreement by Respondent (the Bankruptcy Court's failure to approve shall not constitute non-compliance), and after 14 days' notice from the Regional Director of such non-compliance without remedy by the Respondent, the Regional Director will reissue the amended

compliance specification previously issued on August 10, 2015 in the instant case. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. Respondent understands and agrees that the allegations of the aforementioned compliance specification will be deemed admitted and its Answer to such compliance specification will be deemed withdrawn. The only issue that may be raised before the Board is whether Respondent defaulted on the terms of this Compliance Agreement. The Board may then, without necessity of trial or any other proceeding, find all the allegations of the compliance specification to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Respondent on all issues raised by the pleadings. The Board may then issue an order providing a full remedy. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Respondent at the last address provided to the General Counsel.

Charged Parties **TAFT COAL SALES & ASSOCIATES, INC., WALTER MINERALS, INC.**		**Charging Party** **UNITED MINE WORKERS OF AMERICA, DISTRICT 20**	
By: Name and Title Atty for Respondents	Date 10/2/15	By: Name and Title	Date
Recommended By: /S/ Katherine Chahrouri Katherine Chahrouri, Field Attorney	Date 10/2/2015	Approved By: /s/Claude T. Harrell, Jr. Claude T. Harrell, Jr., Regional Director, Region 10	Date 10/23/2015

	Administrative Expense Claimed by the NLRB			**Wage Priority Claimed by the NLRB**			**General Unsecured Claimed by the NLRB**							
Discriminatee	Backpay Earned Between 7/15/15 and 8/3/15	Expenses Earned Between 7/15/15 and 8/3/15	Total Earned Between 7/15/15 and 8/3/15	Backpay Earned Between 1/16/15 and 7/14/15 (to max cap amount)	Expenses Earned Between 1/16/15 and 7/14/15 (to max cap amount)	Total Earned Between 1/16/15 and 7/14/15 (to max cap amount)	80% of Backpay Earned Between 1/16/15 and 7/14/15 (beyond max cap amount)	80% of Expenses Earned Between 1/16/15 and 7/14/15 (beyond max cap amount)	80% of Backpay Earned Between 6/27/12 and 12/31/14	80% of Expenses Earned Between 6/27/12 and 12/31/14	80% of Excesss Tax Earned Between 6/27/12 and 12/31/14	80% of 401k Earned to 12/31/14	80% Interest Amount to 7/14/15	Total 80% Amount
Julian Aultman	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$13,252.95	$9,994.40	$268.80	$0.00	$1,351.20	$24,867.35
Larry Barker	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$60,031.34	$10,043.66	$1,070.40	$0.00	$4,300.00	$75,445.39
Joseph Bland	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$78,580.67	$1,128.66	$6,570.40	$0.00	$3,000.00	$89,279.74
Johnathan Boshell	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$7,775.47	$2,385.60	$204.00	$0.00	$1,337.60	$11,702.67
Timothy Bryant	$2,078.90	$1,614.48	$3,693.38	$7,022.17	$5,452.83	$12,475.00	$11,681.73	$9,070.17	$30,831.54	$25,724.57	$4,510.40	$5,706.69	$2,432.80	$89,957.90
Gerald Conner	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$612.86	$0.00	$0.00	$0.00	$54.40	$667.26
Timothy Couringto	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$39,515.33	$0.00	$1,840.80	$0.00	$3,119.20	$44,475.33
Anthony Howton	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23,855.44	$1,733.60	$82.40	$0.00	$1,664.00	$27,335.44
Randy Hunt	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$23,333.06	$10,999.68	$614.40	$3,518.37	$2,542.40	$41,007.91
Anthony Jenkins	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$19,784.86	$218.01	$193.60	$0.00	$1,421.60	$21,618.06
Joey Jones	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$49,544.62	$2,240.00	$2,329.60	$0.00	$3,839.20	$57,953.42
Dustin Kimbrell	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$21,893.54	$3,893.76	$666.40	$2,805.26	$2,035.20	$31,294.15
Barry Mauldin	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$50,072.65	$5,256.16	$824.80	$0.00	$4,208.00	$60,361.61
William McKinney	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$39,726.78	$626.11	$797.60	$0.00	$2,904.00	$44,054.49
Garry Murray	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$1,214.34	$0.00	$0.00	$0.00	$122.40	$1,336.74
James Plunkett	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$2,806.95	$4,601.32	$0.00	$0.00	$558.40	$7,966.67
Robert Plunkett	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$13,327.98	$0.00	$0.00	$5,891.84	$1,058.40	$20,278.22
Robert Posey	$2,124.32	$0.00	$2,124.32	$12,475.00	$0.00	$12,475.00	$7,697.42	$0.00	$83,342.73	$0.00	$5,276.00	$6,263.38	$4,262.40	$106,841.93
Birt Randolph	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$36,997.14	$564.67	$425.60	$0.00	$2,574.40	$40,561.82
Mason Tubbs	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$15,975.78	$0.00	$88.80	$0.00	$1,123.20	$17,187.78
Johnathan Ward	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$27,350.38	$555.00	$640.80	$0.00	$2,352.80	$30,898.98
TOTAL	$4,203.22	$1,614.48	**$5,817.70**	$19,497.17	$5,452.83	**$24,950.00**	$19,379.15	$9,070.17	$639,826.41	$79,965.20	$26,404.80	$24,185.54	$46,261.60	**$845,092.86**
GRAND TOTAL	**$875,860.56**													

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re: WALTER ENERGY, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 15-02741-TOM11 Jointly Administered

ORDER APPROVING TAFT COAL SALES & ASSOCIATES, INC.'S AND WALTER MINERALS, INC.'S COMPROMISE AND SETTLEMENT WITH REGION 10 OF THE NLRB PURSUANT TO FED. R. BANKR. P. 9019

Upon the motion (the "Motion")[2] of Taft Coal Sales & Associates, Inc. ("Taft") and Walter Minerals, Inc. ("WM"), two of the debtors in the above-captioned chapter 11 cases (collectively, the "Debtors"), for entry of an order, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) approving a compromise and settlement by and between Taft, WM, and Region 10 of the National Labor Relations Board ("Region 10," and together with Taft and WM, the "Settlement Parties"), as evidenced by a *Compliance Agreement* executed on October 2, 2015 (the "Settlement Agreement"); and it appearing that this Court has jurisdiction to consider the Motion

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Walter Energy, Inc. (9953); Atlantic Development and Capital, LLC (8121); Atlantic Leaseco, LLC (5308); Blue Creek Coal Sales, Inc. (6986); Blue Creek Energy, Inc. (0986); J.W. Walter, Inc. (0648); Jefferson Warrior Railroad Company, Inc. (3200); Jim Walter Homes, LLC (4589); Jim Walter Resources, Inc. (1186); Maple Coal Co., LLC (6791); Sloss-Sheffield Steel & Iron Company (4884); SP Machine, Inc. (9945); Taft Coal Sales & Associates, Inc. (8731); Tuscaloosa Resources, Inc. (4869); V Manufacturing Company (9790); Walter Black Warrior Basin LLC (5973); Walter Coke, Inc. (9791); Walter Energy Holdings, LLC (1596); Walter Exploration & Production LLC (5786); Walter Home Improvement, Inc. (1633); Walter Land Company (7709); Walter Minerals, Inc. (9714); and Walter Natural Gas, LLC (1198). The location of the Debtors' corporate headquarters is 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244-2359.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

Case 15-02741-TOM11 Doc 1547-4 Filed 12/22/15 Entered 12/22/15 12:49:25 Desc
Index D (Order Approving settlement) Page 1 of 8

pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and the Court having held a hearing on the Motion on December 22, 2015 at 10:00 a.m. (prevailing Central Time); and the Court having found that the relief sought in the Motion is in the best interests of the Taft, WM, their estates, their creditors and all other parties in interest; and the legal and factual basis set forth in the Motion having established just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore; it is hereby ORDERED that:

1. The Motion is GRANTED as set forth herein.

2. The Settlement Agreement is hereby approved.

3. The total amount of Taft's and WM's liability for backpay, as determined in the NLRB Proceedings, is $875,860.56 (the "Settlement Amount"). Region 10 shall amend its Proof of Claim [Claim No. 38] in accordance with the Settlement Amount and the priorities it asserts in the Settlement Agreement within fourteen (14) days of entry of this Order.

4. Nothing in this order determines or adjudicates the validity, priority or allowance of Region 10's claim, including the allowance of any portion of its claim as administrative expense claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code or a priority claim under section 507(a)(4) of the Bankruptcy Code, and all the parties' rights (and the rights of any other party in interest in the Chapter 11 Cases) related thereto are fully preserved; provided, however, that Taft and WM shall not object

to the allowance of Region 10's claim, once amended as set forth above, to the extent and as set forth in the Settlement Agreement.

5. If the Settlement Agreement shall be null and void, of no further force and effect pursuant the terms stated therein, Region 10's Proof of Claim [Claim No. 38] shall be reinstated as if no Settlement Agreement had been entered into without the need for further action or order from this Court.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: December 22, 2015

/s/ Tamara O. Mitchell
TAMARA O. MITCHELL
United States Bankruptcy Judge

Notice Recipients

District/Off: 1126−2	User: ltumlin	Date Created: 12/22/2015
Case: 15−02741−TOM11	Form ID: pdf000	Total: 235

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

cr	Delaware Trust Company, as Indenture Trustee
aty	Lisa Beckerman

TOTAL: 2

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TOTAL: 85

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cr	Cowin & Company, Inc.	c/o Daniel D. Sparks 505 20th Street North Suite 1800 Birmingham, AL 35203
cr	Nelson Brothers, LLC	c/o Daniel D. Sparks 505 20th Street North Suite 1800 Birmingham, AL 35203
ba	J. Thomas Corbett	Bankruptcy Administrator 1800 5th Avenue North Birmingham, AL 35203
cr	United Mine Workers of America	c/o Sharon L. Levine Lowenstein Sandler, LLP 65 Livingston Avenue & 6 Becker Farm Rd Roseland, NJ 07068
intp	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036−6745
intp	Wilmington Trust, National Association	Corporate Capital Markets 50 South Sixth Street Ste 1290 Minneapolis, MN 55402
intp	Scott Greissman	White & Case LLP 1155 Avenue of the Americas New York, NY 10036
cr	Alabama State Port Authority	c/o Benjamin S. Goldman, Esquire 2001 Park Place North Suite 1200 Birmingham, AL 35203
cr	Thompson Tractor Co., Inc.	c/o Benjamin S. Goldman, Esquire 2001 Park Place North Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	Parker Towing Company, Inc.	c/o Benjamin S. Goldman, Esquire 2001 Park Place North Suite 1200 Birmingham, AL 35203 UNITED STATES
cr	RGGS Land & Minerals, LTD., L.P.	c/o Robert A. morgan ROSN HARWOOD, kPA 2200 Jack Warner Parkway, Suite 200 P. O. Box 2727 Tuscaloosa, AL 35403−2727
cr	Birmingham Rail & Locomotive, Co., Inc.	Lindan J. Hill 600 University Park Place Suite 100 Birmingham, AL 35209
cr	Arch Insurance Company	c/o C. Ellis Brazeal III Jones Walker LLP 1819 5th Avenue North Suite 1100 Birmingham, AL 35203
cr	Aspen American Insurance Company	c/o C. Ellis Brazeal III Jones Walker LLP 1819 5th Avenue North Suite 1100 Birmingham, AL 35203
op	Kurtzman Carson Consultants LLC	Attn: James Le 2335 Alaska Ave. El Segundo, CA 90245
cr	Shook and Fletcher Supply Company, Inc.	c/o Stephen B. Porterfield Sirote & Permutt, P.C. 2311 Highland Avenue S. Birmingham, AL 35205
cr	G. R. Harsh Sr., Real Estate Holdings, LLC	c/o Milton Harsh 110 Malaga Avenue Homewood, AL 35209
intp	Janine LaDouceur	264 Commerce Street Hawthorne, NY 10532
cr	Hager Oil Company, Inc.	c/o Marvin E. Franklin Najjar Denaburg, P.C. 2125 Morris Avenue Birmingham, AL 35116
cr	S.E. Belcher, Jr. Private Foundation No. 3	c/o Jesse S. Vogtle, Jr. PO Box 306 Birmingham, AL 35201
cr	CONSOLIDATED PIPE & SUPPLY CO., INC.	c/o Marvin E. Franklin Najjar Denaburg, P.C. 2125 Morris Avenue Birmingham, AL 35203
cr	Pension Benefit Guaranty Corporation	1200 K St., NW Washington, DC 20005
cr	Automotive Rentals, Inc.	c/o McGlinchey Stafford 10407 Centurion Pkwy. N. Suite 200 Jacksonville, FL 32256
cr	Jefferson County Department of Health	and/or Mark E. Wilson, MD 1400 Sixth Avenue South Birmingham, AL 35233
cr	Wesley West Minerals, Ltd.	c/o Robert A. Morgan ROSEN HARWOOD, PA 2200 Jack Warner Parkway, Suite 200 PO Box 2727 Tusclaoosa, AL 35403−2727
intp	U.S. Securities and Exchange Commission	Atlanta Regional Office 950 East Paces Ferry Road, N.E. Suite 900 Atlanta, GA 30326−1382
cr	George M. Phillippi	4 Office Park Circle, Suite 313 Birmingham,, AL 35223

cr	Appalachian Power Company d/b/a American Electric Power	c/o Eric T. Ray, Esq. Post Office Box 306 Birmingham, AL 35201
intp	Ramsay McCormack Land Co. Inc.	c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203
intp	Dominion Resources Black Warrior Trust by and through its Trustee, Southwest Bank	c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203
cr	Comerica Bank	Balch & Bingham LLP PO Box 306 Birmingham, AL 35201
cr	NATIONAL LABOR RELATIONS BOARD	Region 10 Birmingham Resident Office 1130 22nd St S, Suite 3400 BIRMINGHAM, AL 35205 JEFFERSON
cr	Frontier Enterprises	Balch & Bingham LLP PO Box 306 Birmingham,, AL 35201
crcm	Mayer Electric Supply Co., Inc.	Attn: Mark J. Horn 3405 4th Avenue S Birmingham, AL 35222
crcm	Delaware Trust Company, as Indenture Trustee	Attn: Sandra E. Horwitz 2711 Centerville Road Wilmington, DE 19808
crcm	UMWA 1974 Pension Plan and Trust	Attn: David W. Allen 2121 K Street, N.W. Washington, DC 20037
crcm	UMB Bank National Association	Attn: Mark Flannagan 1010 Grand Blvd. Kansas City, MO 64106
crcm	United Steelworkers	Attn: David R. Jury 60 Boulevard of the Allies, Room 807 Pittsburgh, PA 15222
crcm	Hager Oil Company, Inc.	Attn: Philip C. Grace P O Box 1429 Jasper, AL 35502−1429
crcm	United Mine Workers of America	Attn: Grant Crandall 18354 Quantico Gateway Drive, Suite 200 Triangle, VA 22172
crcm	Carroll Engineering Co.	Attn: Greg Wolfe 227 Industrial Park Dr Harlan, KY 40831
crcm	Consolidated Pipe & Supply Co., Inc.	Attn: Chris Harper 1205 Hilltop Parkway Birmingham, AL 35124
cr	Michael Earl Carney	51140 Highway 13 Eldridge, AL 35554
cr	Caterpillar Financial Services Corporation	Baker, Donelson, Bearman, Caldwell & Berkowitz, PC 420 20th Street North Suite 1400 Birmingham, AL 35203
cr	Sandvik Mining and Construction USA, LLC	201 17th Street NW Suite 1700 Atlanta, GA 30363
aty	Rachel L Webber	ROSEN HARWOOD, PA 2200 Jack Warner Parkway, Suite 200 Post Office Box 2727 Tuscaloosa, AL 35403−2727
crcm	Pension Benefit Guaranty Corporation	Attn: Michael Strollo 1200 K St. NW Washington, DC 20005
crcm	Nelson Brothers LLC	Attn: Jason K. Baker 820 Shades Creek Pkwy Ste 2000 Birmingham, AL 35209
intp	Michael Bazley	PO Box 20 Tracy, CA 95378
intp	GE Capital Information Technology Solutions, Inc f/d/b/a IKON Financial Services	Bankruptcy Administration 1738 Bass Road P O Box 13708 Macon, GA 31208−3708
intp	WHH Real Estate, LLC	c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203
cr	Alabama Gas Corporaton	c/o Brian R. Walding Walding LLC 2227 First Avenue South, Suite 100 Birmingham, AL 35233
cr	Jewel D Chaney	2759 County Road 63 South Berry, AL 35546
intp	Robert Makohin	73280 Shadow Mountain Dr Unit D Palm Desert, CA 92260
intp	Albert Plus, LLC	407 Vantage Point Tuscaloosa, AL 35406
cr	EXLP Operating, LLC	Stephen B. Porterfield Sirote & Permutt, P.C. 2311 Highland Avenue S. Birmingham, AL 35205
intp	University of Notre Dame	c/o Lee R. Benton Benton & Centeno, LLP 2019 3rd Avenue North Birmingham, AL 35203
cr	KyKennKee, Inc	P.O. Box 290 Vance, AL 35490
crcm	Official Committee of Retired Employees of Walter Energy, Inc.	Adams and Reese LLP 1901 6th Avenue North, Suite 3000 Birmingham, AL 35203 UNITED STATES OF AMERICA
cr	Alabama Surface Mining Commission	P. O. Box 2390 Jasper, AL 35402−2390
cr	Charles M. Cassidy Group, LLC	c/o Kristofor D. Sodergren Rosen Harwood, P.A. 2200 Jack Warner Parkway, Suite 200 P.O. Box 2727 Tuscaloosa, AL 35403−2727
cr	Alabama Department of Conservation and Natural Resources	c/o Kristofor D. Sodergren Rosen Harwood, P.A. P.O. Box 2727 Tuscaloosa, AL 35403−2727
ex	Direct Fee Review LLC	W. Joseph Dryer 1000 N West Street Suite 1200 Wilmington, DE 19801
ba	Birmingham Water Works	3600 1st Avenue N Birmingham, AL 35222
aty	Maynard, Cooper and Gale	Maynard, Cooper, & Gale, P.C. 1901 Sixth Avenue North 2400 AmSouth Harbert Plaza Birmingham, AL 35203−2618
cr	Southeast Fabricators, Inc.	c/o Kristofor D. Sodergren Rosen Harwood, P.A. P.O. Box 2727 Tuscaloosa, AL 35403
cr	Citizens' Water Service, Inc.	PO Box 670 Vance, AL 35490
intp	Frankie R. Cicero	PO Box 126 Sumiton, Al 35148
cr	Preston B. Burnett	S. Scott Hickman, Atty at Law, LLC c/o S. Scott Hickman 2600 Tuscaloosa, Al 35401
cr	Oracle America, Inc.	c/o Shawn M. Christianson Buchalter Nemer 55 Second Street, 17th Floor San Francisco Ca, 94105 SAN FRANCISCO
intp	Barbara Ann Chism	14123 Freeman Rd Tuscaloosa, AL 35405−9579
cr	TN Dept of Revenue	c/oTN Atty General, Bankruptcy Div PO Box 20207 Nashville, TN 37202−0207
op	AixPartners LLP	James A. Mesterharm, Managing Director 2000 Town Center Ste 2400 Southfield, MI 48075
op	The Segal Company (Eastern States), Inc.	1920 N Street NW Suite 400 Washington, DC
cr	ACE American Insurance Company (Creditor)	c/o David B. Anderson 505 N. 20th Street, Suite 1450 Birmingham
cr	United States of America	Joyce White Vance United States Attorney 1801 Fourth Avenue North Birmingham, AL 35203
fa	Keightley & Ashner LLP	700 12th Street NW Washington, DC 20005

aud	Ernst & Young LLP	Jeffrey Blankenship	1901 6th Ave N Ste 1200	Birmingham, AL 35203	
intp	Ronnie Hodges	5023 Jiim Gogganus Rd	Dora, AL 35062		
intp	Terry Eulenstein	12116 Narrow Lane	Brookwood, AL 35444		
intp	Vicki R. Craig	1801 Green Street	Selma, AL 36703		
intp	Barbara Warren	116 Daventry Dr	Calera, AL 35040		
intp	Jeffrey Brian Watts	P O Box 505	Resaca, GA 30735		
intp	Franklin Perdue	3105 29th Ave N`	Birmingham, AL 35207		
intp	Regions/FNBT	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727	Tuscaloosa, AL 35403−2727
intp	University of Notre Dame du Lac	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727	Tuscaloosa, AL 35403−2727
intp	Regions Bank	c/o Robert A. Morgan	ROSEN HARWOOD, PA	PO Box 2727	Tuscaloosa, AL 35403−2727
fa	Berkeley Research Group LLC	1800 M St NW Ste 200	Washington, DC 20036		
cr	De−Gas	c/o Jesse S. Vogtle, Jr.	Balch & Bingham LLP	PO Box 306	Birmingham, AL 35201
cr	Pardee Minerals LLC	Baker, Donelson, Bearman	Caldwell & Berkowitz, PC	420 North 20th Street	Suite 1400 Birmingham, AL 35203
cr	Airgas USA, LLC	c/o Kathleen M. Miller	Smith, Katzenstein & Jenkins, LLP	PO Box 410	Wilmington, DE 19801
cr	Alabama Power Company	c/o Eric T. Ray, Esq.	Balch & Bingham	P. O. Box 306	Birmingham, AL 35201−0306
cr	George Hunter Enis	c/o Kyle B. Fonville	Burnett Plaza, Suite 2000	801 Cherry Street, Unit 46	Fort Worth, TX 76102
cr	Kforce, Inc.	Cabaniss Johnston	2001 Park Place North	Suite 700	Birmingham, AL 35203
intp	John Jenkins	1229−15th Place SW	Birmingham, AL 35211		
cr	CSX Transportation, Inc.	c/o James H. White, IV	420 20th Street North	Suite 1400	Birmingham, AL 35203
cr	Strata Mine Services, LLC	c/o James H. White, IV	Baker Donelson	420 20th Street North	Suite 1400 Birmingham, AL 35203
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aty	Beth Brownstein	Arent Fox PLLC	1675 Broadway	New York, NY 10019	
aty	Bobby H Cockrell, Jr	Cockrell & Cockrell	1409 University Blvd	Tuscaloosa, AL 35401−1633	
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aty	Bruce D. Buechler	Lowenstein Sandler LLP	65 Livingston Avenue	Roseland, NJ 07068	
aty	Charles B. Sklarsky	Jenner & Block LLP	353 North Clark Street	Chicago, IL 60654−3456	
aty	Charles L. Kerr	MORRISON &FOERSTER LLP	250 West 55th Street	New York, NY 10019−9601	
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aty	Harold L. Kaplan	321 North Clark St Ste 2800	Chicago, IL 60654−5313		
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aty	Jennifer L. Marines	MORRISON &FOERSTER LLP	250 West 55th Street	New York, NY 10019−9601	
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aty	John H. Maddock, III	McGuireWoods LLP	Gateway Plaza	800 East Canal Street	Richmond, VA 23219
aty	John R. Mooney	Mooney, Green, Saindon, Murphy & Welch,	1920 L Street NW Suite 400	Washington, DC 20036	
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smg	Steering Committee	c/o Akin Gump Strauss Hauer & Feld LLP One Bryant Park Bank of America Tower New York, NY 10036−6745

TOTAL: 148

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In re:	Chapter 11
WALTER ENERGY, INC., *et al.*,	Case No. 15-02741-TOM11
Debtors.	Jointly Administered

AFFIDAVIT OF JENNY DUNN

I, Jenny Dunn, being duly deposed, hereby state the following:

1. I am employed as Compliance Officer for Region 10 (the "Region") of the National Labor Relations Board ("NLRB" or "Board"), out of its office in Winston-Salem, North Carolina. I have held this position for approximately 5 years. My job duties include monitoring compliance with Board Orders and Court Judgments, and computing backpay and benefits owed pursuant to such orders and judgments.

2. I have been personally involved in the Region's calculation of backpay owed by Debtors Taft Coal Sales & Associates, Inc. ("Taft") and Walter Minerals, Inc. ("WM"), pursuant to the Board's January 10, 2014 Decision and Order (the "NLRB Decision") (reported at 360 NLRB No. 19) in Case 10-CA-088599 and 10-CA-093022, enforced by the 11th Circuit of the U.S. Court of Appeals (unpublished, reported at 586 F. App'x 525, October 2, 2014).

3. The court-enforced NLRB Decision requires, among other things, a make whole remedy to 21 affected employees of Taft, WM and Walter Energy, Inc. which includes the payment of backpay.

4. Pursuant to the standard Board practices and procedures, backpay may include: (a) wages that would have been earned if not for the unlawful action, minus any interim earnings; (b) reimbursable employee expenses including search for work expenses incurred by employees while seeking interim employment, interim expenses incurred by employees as a result of interim employment, and medical expenses incurred by employees during the backpay period in excess of those the employee would have incurred if he remained employed by the employer; (c) benefits that would have been earned by employees had they remained in employ, including but not limited to 401(k) benefits; (d) reimbursement for excess taxes resulting from the tax penalty occurring because of receiving lump sum backpay in a single tax year rather than during the years it was accrued; and (e) compound daily interest accruing to the date of backpay payment to employees.

5. Upon my review of data provided by Taft and WM, and applying the aforementioned standard Board practices and procedures, I have determined that, as of October 2, 2015, Taft and WM owe backpay in the amount **$1,092,873.00**[1] (including interest through July 14, 2015)[2]. However, in an October 2, 2015 Settlement Agreement with Taft and WM, this backpay amount was compromised to the total amount of **$875,860.56** (the "Settlement Amount").

6. Utilizing the data provided by Taft and WM and applying the aforementioned standard Board practices and procedures, I prepared Attachment A to the

[1] This amount reflects corrections to the calculations set forth in the Board's compliance specifications resulting from later acquired evidence.

[2] Pursuant to standard Board practices and procedures, interest, excess taxes, and interest on excess taxes continue to accrue until the date the backpay is paid.

Settlement Agreement, which sets forth the amounts and dates of backpay[3] and related accruals, in the total Settlement Amount of **$875,860.56** as follows:

a. $5,817.70 for backpay ($4,203.22) and reimbursable employee expenses ($1,614.48), exclusive of interest, accruing post-bankruptcy between 7/15/15 and 8/3/15;

b. $24,950.00 for backpay ($19,497.17) and reimbursable expenses ($5,452.83), exclusive of interest, up to the maximum bankruptcy cap of $12,475 per person, accruing within 180 days prior to bankruptcy between 1/16/15 and 7/14/15;

c. $19,379.15 for 80% of backpay, beyond the maximum bankruptcy cap, accruing within 180 days prior to bankruptcy between 1/16/15 and 7/14/15;

d. $9,070.17 for 80% of reimbursable expenses, beyond the maximum bankruptcy cap, accruing within 180 days prior to bankruptcy between 1/16/15 and 7/14/15;

e. $639,826.41 for 80% of backpay accruing between 6/27/12 and 12/31/14;

f. $79,965.20 for 80% of reimbursable expenses accruing between 6/27/12 and 12/31/14;

g. $26,404.80 for 80% of excess tax incurred by employees between 6/27/12 and 12/31/14;

h. $24,185.54 for 80% of 401k earned to 12/31/14; and

i. $46,261.60 for 80% of interest accrued to 7/14/15, calculated based on interest rates in effect over the period for which interest is charged and compounded on a daily basis.

7. Based upon the foregoing, the Board asserts an administrative expense claim in the amount of $5,817.70 (see subparagraph 6a above); a wage priority claim in the amount of $24,950 (see subparagraph 6b above); and a general unsecured claim in the amount of $845,092.86 (see subparagraphs 6c-6i above).

[3] Backpay wages were calculated based on employees' hourly wage rates at the time of their layoff multiplied by the average regular hours and overtime hours worked by employees during the backpay period.

Upon penalty of perjury, the foregoing statement is true and correct, to the best of my knowledge, information and belief.



JENNY DUNN

Dated this 28th day of December, 2015, at
Winston-Salem, North Carolina