

CHAPTER 6

Collective Bargaining Obligations

Following A Hiatus in Coal Mining Operations

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Synopsis

§ 6.01. Introduction.

§ 6.02. Obligations on Resumption of Operations During the Term of a Wage Agreement.

[1]--Resumption of Operations by the Signatory Employer.

[2]--Resumption of Operations by a Purchaser.

[a]--Historical Developments.

[b]--Recent Developments.

§ 6.03. Obligations on Resumption of Operations After a Wage Agreement Has Ended.

[1]--Resumption of Operations by a Purchaser.

[2]--Resumption of Operations by the Same Employer.

[a]--Basic Principles.

[b]--Exceptions.

[i]--Minor Operational and Management Changes.

[ii]--Temporary Cessation of Operations.

[iii]--Indefinite Hiatus.

[c]--Some Very Special Cases for Indefinitely Closed Coal
Mines.

[d]--Summary.

§ 6.04. Obligations of Asset or Stock Purchaser Following Hiatus in Operations.

[1]--Successorship and the Asset Purchaser.

[a]--Substantial Continuity.

[b]--Majority Support.

[c]--Nature of the Successorship's Bargaining Obligations.

[d]--Summary.

[2]--Successorship and the Stock Purchaser.

§ 6.05. Conclusion.

§ 6.01. Introduction.

Market conditions and other variables dictate whether coal mining operations will begin, terminate, or resume following a hiatus in operations. Each of these business decisions involve concomitant collective bargaining obligations for the employer. This Chapter focuses on the employer's bargaining obligations when resuming operations following a hiatus. Specifically, it addresses (1) whether an employer that resumes mining operations following a hiatus must recognize and bargain with the United Mine Workers of America (UMWA) and honor the terms and conditions of the National Bituminous Coal Wage Agreement of 1988 (1988 Wage Agreement) or a subsequent Wage Agreement, (2) how such obligations may be affected by the expiration of any Wage Agreement during the hiatus in operations, and (3) what obligations may apply to an asset or stock purchaser in this situation.⁽¹⁾

§ 6.02. Obligations on Resumption of Operations During the

Term of a Wage Agreement.

[1]--Resumption of Operations by the Signatory Employer.

Historically, there has been little or no dispute that when a signatory employer resumes operations during the term of a Wage Agreement, that employer normally remains obligated to honor the Agreement, including, in particular, its recall provisions. This practice is generally consistent with the National Labor Relations Board's (Board) position that an employer resuming operations during the term of a collective bargaining agreement must recognize and bargain with the pre-hiatus union and abide by the terms of the pre-hiatus agreement unless (a) the termination of operations clearly was intended to be permanent and the bargaining unit therefore ceased to exist,⁽²⁾ or (b) the resumption of operations occurred at another site and less than 40% of the prior employees transferred to or accepted employment at that site.⁽³⁾

This practice is consistent with the fact that, even if the Board concluded that the employer did not violate the National Labor Relations Act⁽⁴⁾ (NLRA) by not honoring the 1988 Wage Agreement upon a resumption of operations, the collective bargaining agreement still may be enforceable in a different forum. For example, even if the Board failed to find a violation of the NLRA, the UMWA still may be able to file a grievance or a lawsuit for breach of contract in federal court under Section 301 of the Labor-Management Relations Act⁽⁵⁾ (LMRA). Additionally, the Trustees of the United Mine Workers of America Health and Retirement Funds may be able to assert a colorable claim in federal court to collect contributions under Section 515 of the Employee Retirement Income Security Act (ERISA).⁽⁶⁾

Therefore, as a rule, a signatory employer that resumes operations during the term of a Wage Agreement most likely will be obligated to continue recognizing the UMWA and abiding by that Agreement for its term.