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THE IMPACT OF DISTRICT 29, UNITED MINE WORKERS v. ROYAL COAL CO. ON THE SALE OF A COAL FACILITY

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The recent ruling of *District 29, United Mine Workers v. Royal Coal Co.*,[1] by the United States Court of Appeals for the Fourth Circuit has a dramatic impact on the issue of health and non-pension benefits for retirees of the United Mine Workers of America (UMW). Previously, the Fourth Circuit had reviewed the issue in *District 17, United Mine Workers v. Allied Corp.*,[2] and ruled that, under certain circumstances, the health benefits for retirees do extend beyond the termination of the wage agreement. Although the *Allied* decision concerned successorship issues and *Royal Coal* dealt with a party's obligations during the life of the collective bargaining agreement, both decisions will bring more attention to the role of the United Mine Workers of America 1974 Benefit Plan and Trust. The remand in *Royal Coal* by the appellate court to the district court for the Southern District of West Virginia to determine whether the 1974 Benefit Plan is obligated to provide benefits to the class members when the employer is no longer a signatory to a wage agreement is indicative of the Benefit Plan's increasing significance. In this regard, this article will examine the critical terms utilized by the 1974 Benefit Plan, the questions of successorship and "going out of business," and the impact of the two Fourth Circuit decisions on the sale or transfer of coal mining operations.

I. BARGAINING HISTORY

On December 6, 1974, the UMW and the Bituminous Coal Operators' Association (BCOA) executed the 1974 Wage Agreement. In Article XX of that Agreement the parties established a multiemployer welfare benefit plan —the 1974 Benefit Trust. The 1974 Benefit Trust provided health and death benefit coverage to active employees of all signatory employers and to certain pensioners of the UMWA 1974 Pension Trust who retired after December 31, 1975.[3]

The 1974 Wage Agreement expired on December 6, 1977. Subsequently, the UMW began an economic strike that lasted until March 27, 1978. The BCOA's demand that the system for delivery of health care be changed from a multiemployer plan, covering all active and retired miners, to individual company plans, with each plan responsible for only the individual company's active and retired miners was one of the reasons for that strike. The UMW finally acquiesced.

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[1] District 29, United Mine Workers v. Royal Coal Co., 768 F.2d 588 (4th Cir. 1985).

[2] District 17, United Mine Workers v. Allied Corp., 735 F.2d 121 (4th Cir. 1984) [hereinafter Allied I], *rehearing en banc*, 765 F.2d 412 (4th Cir. 1985) [hereinafter Allied II], *cert. denied*, 105 S. Ct. 3527 (1985). The case was initially decided by a three-judge panel. Thereafter, upon motion, the court heard the matter *en banc*. Granting of a hearing *en banc* vacates the previous panel judgment and the opinion. The rehearing is a review of the district court opinion and not a review of the panel judgment. *See* FED. R. APP. P. 35.

[3] The 1974 Benefit Plan also provided benefit coverage to eligible dependents of active employees and pensioners.

During protracted negotiations, the BCOA also sought to eliminate the 1974 Benefit Trust entirely. The union, however, wanted to preserve the 1974 Benefit Trust in order to provide benefits to pensioners who would otherwise lose their benefits by virtue of the change from a multiemployer plan to a group of individual company plans. The BCOA resisted this demand until the end of negotiations, when it finally agreed, thereby amending the 1974 Benefit Trust and perpetuating it under the 1978 Wage Agreement. Under the new agreement, the 1974 Benefit Trust provided benefits to eligible pensioners who retired before the effective date of the 1978 Wage Agreement and whose last signatory employers had either gone out of business before the inception of the 1978 Agreement or had refused to sign the 1978 Agreement; eligible pensioners who retired after the effective date of the 1978 Wage Agreement and whose last signatory employer went out of business during the term of the Agreement were also incorporated. Specifically, Article II.F of the 1974 Benefit Trust was amended to provide health and death benefits "to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business. . . . "

The critical terms of this provision—"*successor*," and "*no longer in business*"—are not further defined in either the 1974 Benefit Trust or in the 1978 Wage Agreement. However, the trustees of the 1974 Benefit Trust set forth their interpretation of these terms in Q&A H-16.[4] The language of Article XX has remained unchanged in the 1981 and 1984 Wage Agreements.

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[4] Pursuant to their authority under Article II of the 1974 Benefit Trust, the Trustees adopted Q&A H-16, wherein they defined the term "no longer in business" and "successor," as used in Article II.F. of the Trust, as follows:

1. A company, itself signatory to the Wage Agreement, will be considered a "successor" if it expressly assumes health and death benefit obligations of retired persons last employed by the predecessor company by, for example, payment of health care bills or death benefits or execution of a contract with a health carrier providing coverage for such persons; *or*, if the signatory company implicitly assumes these obligations by, for example, oral promises of coverage or by other acts of similar implication.

2. Where no explicit or implicit assumption of obligations has occurred, a company signatory to the 1978 Wage Agreement will be considered a "successor" if:

(a) the new company has signed the 1978 Wage Agreement; *and*
(b) a majority of the employees presently working for the new employer formerly worked for the old employer; *and*
(c) the location is the same geographical area and the work functions have been continued relatively unchanged; *and*
(d) Operations are not suspended for longer than six months (not counting a strike period); *and*
(e) either 1. there has been a transfer of a substantial portion of the assets of the old company employer (seller) to the new company (purchaser).
or 2. the new company is owned and operated by substantially the same people who owned and operated the seller company.

A company is "no longer in business" if

The trustees in Q&A H-16 interpreted the phrase "no longer in business" to mean no longer in the coal business. Accordingly, they defined a company as "no longer in business" if it affirmatively represented to the 1974 Benefit Trust, first, that it was no longer in business and would not "resume operations," second, that it had ". . . not received income from the production or sale of coal, or transportation of coal or related activities, for at least six months. . . ."[5]

II. Successorship Issues

The trustees of the 1974 Benefit Plan told the district court in *Allied* that the definition of "successor" adopted in Q&A H-16 is "consistent with the definition of successor adopted by the Supreme Court."[6] Interestingly, however, the two decisions relied upon by the trustees serve to highlight the distinction between successor corporations and successor employers.

In *NLRB v. Burns International Security, Inc.*,[7] the Wackenhut Corporation had contracted to provide security services at an industrial plant and had entered into a collective bargaining agreement with the United Plant Guard Workers (UPG). Subsequently, the Burns Corporation successfully bid for these security services and employed twenty-seven individuals who had previously worked for Wackenhut. Burns then transferred fifteen of its own employees to the plant in question, recognized the American Federal of Guards, and rejected the UPG's bargaining demand. Noting the propriety of requiring Burns to bargain with the UPG because that union continued to represent a majority of the employees in the bargaining unit, the Supreme Court held that Burns was not bound by any of the predecessor employer's contractual or financial obligations which had become vested prior to Burns' commencement of operations.[8] The Supreme Court endorsed the position, which had consistently been adopted by the NLRB prior to *Burns*, that "although successor employers may be bound to recognize and bargain with the union, they are not bound by the substantive provisions of a collective-bargaining contract negotiated by their predecessors but not agreed to or assumed by them."[9]

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1. the company claims that it is no longer in business by notifying the Funds in writing that the company is no longer in business and will not resume operations and thus requests that the Funds, in reliance upon the company's statement, make payments to any appropriate beneficiaries eligible under provisions of the amended 1974 Benefit Plan and Trust; *and*
2. the company has not received income from the production or sale of coal, or transportation of coal, or related activities, for at least six months even if it retains a license to engage in coal mining or processing within the applicable state or states and retains an office. . . .

[5] *See* Q & A H-16, Part I.

[6] *Allied II*, 765 F.2d at 416.

[7] NLRB v. Burns Int'l Sec. Serv., Inc., 406 U.S. 272 (1972).

[8] *Id.* at 284-86.

[9] *Id.* at 284.

In so holding, the Supreme Court discussed its earlier decision in the case of *John Wiley & Sons, Inc. v. Livingston*,[10] which held that "although the predecessor employer which had signed a collective-bargaining contract with the union had disappeared by merger with the successor, the union could compel the successor to arbitrate the extent to which the successor was obligated under the collective-bargaining agreement."[11] The Court observed that *Wiley* involved a merger between the predecessor and the successor employers which resulted in the total disappearance of the predecessor.

> Its [*Wiley's*] narrower holding dealt with a merger occurring against a background of state law that embodied the general rule that in merger situations the surviving corporation is liable for the obligations of the disappearing corporation. Here there was no merger or sale of assets . . . . Burns purchased nothing from Wackenhut and became liable for none of its financial obligations. Burns merely hired enough of Wackenhut's employees to require it to bargain with the union . . . .[12]

The interplay between the principles established in *Wiley* and *Burns* was further clarified in the case of *Howard Johnson Co. v. Detroit Local Joint Executive Board*,[13] wherein the Supreme Court held that a "successor" employer is not required to assume its predecessor's labor contract, or the predecessor's obligations thereunder, even where the "successor" has full knowledge of the predecessor's contract, or where the predecessor's contract contains a "successorship" clause. The corporate owners of a motel sold certain equipment and other personal property to a successor employer who continued to employ a number of the predecessor's employees. The predecessors remained in business, however, retaining ownership of the motel property *per se* and leasing the premises to the successor employer. In holding that the successor was not obligated by the substantive provisions of the predecessor's contract, the Court stated:

> *Wiley* involved a merger, as a result of which the initial employing entity completely disappeared. In contrast, this case involves only a sale of some assets, and the initial employers remain in existence as viable corporate entities, with substantial revenues . . . . [T]he disappearance of the original employing entity in the *Wiley* merger meant that unless the union were afforded some remedy against Wiley, it would have no means to enforce the obligations voluntarily undertaken by the merged corporation . . . . Here, in contrast, because the [predecessor] corporations continue as viable entities with substantial retained assets, the Union does have a realistic remedy to enforce their contractual obligations.[14]

In *Howard Johnson*, the predecessor's employees were working pursuant to a collective bargaining agreement which contained a provision stipulating that the contract would be binding on "successors."[15] Nonetheless, the successor and

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[10] John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964).

[11] *Burns Int'l*, 406 U.S. at 285.

[12] *Id.* at 286.

[13] Howard Johnson Co., Inc. v. Detroit Local Joint Executive Bd., 417 U.S. 249 (1974).

[14] *Id.* at 257.

[15] *Id.* at 251.

predecessor companies entered into a sales agreement which provided that the successor would neither recognize labor agreements nor assume any obligations of the predecessor.[16] The Supreme Court observed as follows:

> The question whether Howard Johnson is a "successor" is simply not meaningful in the abstract. Howard Johnson is of course a successor employer in the sense that it succeeded to operation of a restaurant and motor lodge formerly operated by the Grissoms. But the real question in each of these "successorship" cases is, on the particular facts, what are the legal obligations of the new employer to the employees of the former owner or their representative. The answer to this inquiry requires analysis of the interest of the new employer and the employees and of the policies of the labor laws in light of the facts of each case and the particular legal obligation which is at issue, whether it be the duty to recognize and bargain with the union, the duty to remedy unfair labor practices, the duty to arbitrate, etc. There is, and can be, no single definition of "successor" which is applicable in every legal context. A new employer, in other words, may be a successor for some purposes and not for others.[17]

The Supreme Court then further explained:

> The mere existence of the successorship clauses in the bargaining agreements between the Union and the [predecessor], however, cannot bind Howard Johnson either to the substantive terms of the agreements or to the arbitration clauses thereof . . . when it is perfectly clear the Company refused to assume any obligations under the agreements.[18]

Turning again to the *Allied* case, the "successorship" provisions contained in the 1978 Wage Agreement notwithstanding, one of Allied's purchasers agreed in connection with the transfer of the Harewood operations that

> [it] shall neither have nor assume any obligation or liability with respect to any Allied Employee, his or her heirs, successors, dependents or assignees, including without limitation any obligation to provide employment, severence payments, or any other benefits, whether for or under any employee benefit plan as defined in Section 3(3) of ERISA maintained by Allied or any affiliate or to which Allied or any affiliate has contributed for or on account of any person employed at the Harewood Mine or otherwise . . . .[19]

The position of the predecessor employer in *Howard Johnson*, and that of Allied, are closely analogous. In *Howard Johnson*, the predecessor ceased to operate its motel and disposed of virtually all of its assets with the exception of the motel building and property. The Court recognized that the successor employer could not also be viewed as a successor corporation and that the predecessor would have to remain liable for its own contractual and financial obligations. Similarly, in *Allied*, after the purchaser acquired the Harewood Mine, it was merely obligated to recognize

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[16] *Id.* at 251-52.

[17] *Id.* at 262 n.9.

[18] *Id.* at 258 n.3.

[19] Sales Agreement between Allied and purchaser. *See* Allied II, 765 F.2d at 415 n.7.

and bargain with the UMWA. The purchaser was in no manner required to assume any of the substantive provisions and obligations under the collective bargaining agreement which had previously governed Allied's relationship with its retirees.

While the federal judiciary has long held that the national labor policy requires successor employers to recognize and bargain with the union which represented the predecessor's workers, the Supreme Court has also recognized the existence of a public policy—no less significant or deserving of implementation by the courts—in favor of the free transfer of capital. As one commentator has observed in discussing the impact of *Howard Johnson*:

> It is clear that the Court has cut back on its broad pronouncements in *Wiley, in the interest of unfettered transfer and development of capital and human resources in business transfers.* In *Howard Johnson*, it ignored the "successors and assigns" provision in the Grissom labor contract as a possible base for arbitral relief against the successor Howard Johnson; it emphasized the technical form which the transfer of assets took [i.e., a contract of sale in which the purchaser disclaimed any responsibility for assuming the substantive obligations contained in any labor agreement between the predecessor and its union]; and it gave no weight to the fact that the Grissom employees retained by Howard Johnson continued to use the same skills performing the same jobs under the same working conditions as before.[20]

Although the district court's judgment order in *Allied* did not impose any obligation upon a purchaser to provide health benefits for the Allied retirees, the court's holding that the purchaser violated the provisions of Article I of the 1978 Wage Agreement when it acquired Allied's coal facilities had serious ramifications for corporations which contemplated future expansion of their coal operations through the purchase or other acquisition of pre-existing mines. The district court in *Allied* held, in effect, that signatory corporations which desire to purchase existing mining operations in West Virginia will have to assume the predecessor employer's liability for the health benefits of retired miners who have never worked, and will never work, a single day for the purchasing entity.

III. The *Allied* Decision

Allied Corporation initially prevailed before the appellate court in its interpretation of the Wage Agreement in the decision of the three-judge panel on May 8, 1984.[21] However, a motion for rehearing was granted which resulted in the eventual *en banc* decision (*Allied II*). After the *Allied II* decision, the majority corrected certain pages of the opinion due to the incorporation of facts which did not exist at the time the district court made its decision.[22] However, the altered record did not modify the legal analysis in the majority opinion.

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[20] Gorman, Labor Law Unionization & Collective Bargaining 583 (1976).

[21] *Allied I*, 735 F.2d 121.

[22] *Allied II*, 765 F.2d 412.

Allied Corporation sold its coal mining facilities during the term of the 1978 Wage Agreement. One purchaser was signatory to the 1978 Agreement for its other operations, and the other purchaser was non-signatory to the 1978 Wage Agreement at the time of the sale. Allied continued to pay the premiums for the health benefits of the Allied retirees during the term of the 1978 Wage Agreement. Moreover, Allied did not sign the 1981 Wage Agreement at this time. There was a period of time after the termination of the 1978 Wage Agreement where Allied continued to pay the premiums under color of mistake.

The purchasing companies refused to pay for any retiree benefits under the theory that each corporate employer would assume responsibility for the health benefits of its own retirees. This responsibility would continue during the life of the collective bargaining agreement so long as the corporate entity was in existence and remained able to meet its financial obligations. If a retiree's former corporate employer went out of business during the life of the collective bargaining agreement, and if there was no successor employer which agreed to assume this responsibility, the 1974 Benefit Plan would provide health benefits to the "orphaned" retiree. In addition, the purchasing companies argued that Allied had fulfilled its obligations under the 1978 Wage Agreement to its retirees by paying the premiums during the term of that agreement.

The UMW's position was that Allied had breached Article I of the 1978 Wage Agreement by not obligating the transferee companies to assume responsibility for the health benefits of the class members. Though ruling in favor of Allied, the initial panel decision of the Fourth Circuit did not leave the retirees without a remedy. The *Allied I* majority found that the 1974 Benefit Trust was created to protect 1974 pensioners not eligible for such benefits from any other employer[23] and that the corpus of the trust exceeded thirty-seven million dollars and the annual interest income greatly exceeded all claims and costs of administration.[24] The panel also found that the trustees of the 1974 Benefit Plan and Trust were trying to avoid the very purpose justifying their existence.[25] In reviewing the question under the resolution of disputes procedure, the trustees had opined two-to-one that Allied was the responsible employer but that the exemption issued by the Department of Labor did not permit them to decide the question. The dissenting member of the trustees was the UMW representative,[26] who believed that the trustees did have the authority to decide the question. If the seller and purchaser were not liable, then the dissenting trustee found the 1974 Benefit Plan responsible. Contrary to the trustees' opinion, the Fourth Circuit panel found that the purchasers were not successors under Q&A H-16 definition and held: "The retired miner plaintiffs *are*

[23] *Allied I*, 735 F.2d at 124-25.

[24] There has been no further contribution to the 1974 Benefit Plan required of employers in the 1981 and 1984 Wage Agreements.

[25] *Allied I*, 735 F.2d at 130.

[26] Trustee Combs.

the intended beneficiaries of the 1974 Benefit Plan and Trust and are entitled to the health and non-pension benefits provided thereunder."[27]

In a five-to-four decision, the *Allied II* court found that Allied should provide the benefits to the retirees because Allied did not require its purchasers to assume its obligations under Article XX of the 1978 Wage Agreement.[28] The *Allied II* court ignored the language in the wage agreement that the benefits were paid only during the life of the collective bargaining agreement. Rather, the court ruled that, because the *purchasers were successors*, the 1974 Benefit Trust agreement prevented the trust from paying the retirees' benefits.[29] While recognizing that no one may be responsible for the benefits of the retirees,[30] the *Allied II* majority found that the trustees' denial of benefits was not arbitrary and capricious. Instead, the majority found that Article I of the Wage Agreement obligated the seller of a coal mine to require the purchaser to assume the seller's obligations under the Agreement.[31] Moreover, the *Allied II* court found that Allied breached Article I of the Agreement by agreeing that its purchasers (who are now, according to the majority, successors) would not assume Allied's obligations under the 1978 Agreement. The *Allied II* decision ignores the fact that Allied paid the premiums during the term of the 1978 Agreement.

The problem is one of "tacking." If the purchasers had assumed the obligations, then the health benefits of these retirees would have been paid in the ensuing agreements by virtue of the purchasers subsequently becoming signatories to the 1981 Wage Agreement. It is this "tacking" arrangement which gives rise to claims of cradle-to-grave coverage for UMW members, which the four dissenting *Allied II* judges disavowed in adopting the majority opinion in *Allied I*.

IV. *ROYAL COAL*

Royal Coal squarely presented the issue of whether retiree health benefits and non-pension benefits extend beyond the expiration of the collective bargaining agreement. Royal ceased all active mining operations during the term of the 1981 Wage Agreement and did not become a signatory to the 1984 Wage Agreement. The 1974 Benefit Plan declined to assume the responsibility for providing these benefits on the ground that Royal had sufficient assets to pay the benefits and thus did not qualify as "no longer in business" within the meaning of the 1978 and 1981 Wage Agreements. The district court had granted the UMW's preliminary injunction that the obligation to provide these benefits extended beyond the term of the Agreement. The Fourth Circuit found that the language of Article XX, section (c)(3)(i), of the 1978 Wage Agreement provided that:

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[27] *Allied I*, 735 F.2d at 134 (emphasis added).
[28] *Allied II*, 765 F.2d at 417.
[29] *Id.* at 416.
[30] *Id.* at 417.
[31] *Id.*

> . . . [E]ach signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other nonpension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be *guaranteed during the term of this Agreement* by each Employer at levels set forth in such plans. . . .[32]

In its discussion, the *Royal Coal* court maintained that its decision is consistent with *Allied II* because, in *Allied II*, the majority "appeared" to accept the dissent's position that a coal mine operator's contractual obligation to provide health and other non-pension benefits to its retirees in the 1978 Wage Agreement does not continue beyond the termination of that agreement.[33]

The rationale of the *Royal Coal* court turns on the express language of the collective bargaining agreement. There are numerous references in the Wage Agreement that benefits are paid only during the term of the Agreement. In Article XXIX of the 1984 Wage Agreement, for example, employers, in the event of an economic strike at the expiration of the Agreement, will advance the premiums for the employees' health and life insurance coverage for the first thirty days of the strike. These premiums are subject to being repaid through check-off deductions upon the employee's return to work. If the strike continues beyond thirty days, the union or the employees may elect to continue coverage by paying the premiums themselves. This and other language in the agreement reflects that it was the intent of the parties that health benefits do not extend beyond the term of the agreement. In *Royal Coal*, the Fourth Circuit vacated the district court's preliminary injunction and remanded the case for further proceedings. The appellate court directed the lower court to determine whether the 1974 Benefit Plan is obligated to provide benefits to the retirees.

V. The Effect of *Allied* and *Royal Coal*

The issue of successorship is highly important in any sale of coal mining facilities in light of *Allied II, Royal Coal*, and other decisions.[34] If there is a sale to a signatory purchaser during the term of a wage agreement, then Article I successorship issues will apply. If, on the other hand, there is a sale to a non-signatory purchaser during the term of a wage agreement, then *Allied II* would dictate that if the seller does not pass along all obligations, then the responsibility for retirees' health benefits

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[32] *Royal Coal*, 768 F.2d at 590.

[33] *Id.*

[34] International Union, U.M.W.A. v. Eastover Mining Co., 603 F. Supp. 1038 (W.D. Va. 1985), the district court rejected the argument that the term "successor" should be limited to those purchasers who would be considered successors under federal labor law. Rather the district court approvingly cited *Allied II* for the proposition that the terms "successor" and "purchaser" are interchangeable for purposes of Article I. The district court in *Eastover* further noted that the purchaser was a successor because it had been assigned certain mining permits and Article I applies to assignees.

may remain with the seller. Finally, if there is a sale of a coal mining facility between signatories to a wage agreement after the expiration of a wage agreement, then neither party may be responsible for the retirees' health benefits.

It is at this stage that the duties and obligations of the 1974 Benefit Plan become apparent. The "risk" for retirees' health benefits would really be allocated to those employers (who may or may not presently be in the coal mining business) who contributed to the 1974 Benefit Plan and Trust during the terms of the 1974 and 1978 Agreements if the seller's retirees are deemed orphans. Moreover, based upon the testimony in the *Allied I* case, the parties to the collective bargaining agreement are also totally free to amend Article XX.[35] There is, however, a note of caution for sellers and purchasers. As suggested by the *Allied II* decision, the usual principles of contract interpretation may not apply: "[f]ederal courts must fashion effective remedies for the impairment of federally created rights in a field of labor relations."[36]

Given that the panel decision in *Allied I* found that the responsibility for such orphaned retirees resided with the 1974 Benefit Plan and given that the *Royal Coal* case remanded the matter with the direction to look to the 1974 Benefit Plan's responsibilities, it is not inconceivable that the Fourth Circuit will look to the trustees, with their thirty-seven million dollar fund, to play an appropriate role in assuming responsibility for retiree benefits.

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Q. [By counsel] As far as you are concerned, are the parties free to change [health care] benefit levels from contract to contract?
A. [By the BCOA negotiator] Are they free?
Q. Meaning the BCOA and the UMWA.
A. Yes, we negotiate on the basis of the term of the contract, and then a whole new ball game at the next negotiation.

* * *

A. Would it be possible for the parties, meaning the BCOA and UMWA, to one day agree to provide no benefits for retirees . . . .
A. For the UMWA and the BCOA?
Q. Yes.
A. I would think that is possible, yes.

Allied I, 735 F.2d at 126-27.

[36] *Allied II*, 765 F.2d at 420.