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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceedings

Docket No. NORT 79-26-P
A.C. No. 44-02853-03001

v.

No. 39 Mine

LAMBERT COAL COMPANY,
RESPONDENT

Docket No. NORT 79-36-P
A.C. No. 44-01656-03002

Docket No. VA 79-26
A.C. No. 44-01656-03004

No. 14 Mine

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor,
Department of Labor, for Petitioner
William Rogers McCall, Esq., Bristol, Virginia,
for Respondent

Before: Administrative Law Judge Michels

These are civil penalty proceedings brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.

820(a). Separate petitions for the assessment of civil penalties were filed in each of the above-captioned dockets alleging a total of 17 violations of 30 CFR 75.1710-1. A hearing was held in Abingdon, Virginia, on June 19, 1979, at which both parties were represented by counsel.

At the hearing, pursuant to 29 CFR 2700.15(b), counsel for Petitioner moved to withdraw the petitions for civil penalty assessments. As grounds for this action, counsel stated:

Each of these docket numbers involved in this proceeding consist solely of

allegations, regulations under 75.1710. In each instance they are related to the Number 39 Mine and the Number 14 Mine of the Lambert Coal Company. After investigating the circumstances surrounding the petitions for the assessment of civil penalties,

the Solicitor's Office moved to withdraw the citations involved for this reason; we are unable to sustain a violation in any of these instances of that mandatory standard. The reason for this in each instance--first of all, each violation was terminated by the fact that MSHA recognized that the mining height had gone below the minimum mining height required under the statute at that time. And that there was an undulating bottom in each of the mines. Now, it further discovered that a petition for modification had been filed with respect to the mines in question by Lambert Coal Company on February 20, 1976. And on April 13th and 14th, 1976, MSHA reported and admitted that the subject mines had a minimum mining height of thirty-eight inches, and therefore, the Number 14, 39 and 40 Mines of the Lambert Coal Company were not subject to the requirements of 30 CFR 75.1710. As the result of the large number of petitions for modification and the change in the regulations which had been in the change over from the Department of Interior to the Department of Labor, a decision was not rendered in this case, unfortunately, until the 26th of October, 1978. In the meantime petitions had been filed against the company. After checking with MSHA's District, there was an agreement that the mining heights did not sustain a violation of this regulation. Each was determined in the petition for modification. Based upon this information, with the knowledge and consent of our client, I wish to withdraw the petitions for assessment of civil penalties.

(Tr. 4-6).

Respondent did not object to Petitioner's proposed action. Thereupon, a ruling was issued from the bench granting approval for Petitioner to withdraw its petitions in these cases (Tr. 7). The proceeding were then dismissed. I hereby AFFIRM that ruling.

Franklin P. Michels
Administrative Law Judge