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KENTLAND-ELKHORN COAL V. MSHA & UMWA  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
WASHINGTON, D.C.  
November 30, 1979

KENTLAND-ELKHORN COAL  
CORPORATION,

v.

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

Docket No. PIKE 78-399

and

UNITED MINE WORKERS OF AMERICA

#### DECISION

The question here is whether a mine operator must pay a miners' representative for the time he spends accompanying a mine inspector during a special electrical inspection of a mine. Administrative Law Judge Lasher answered that question in the negative. We affirm.

On May 23, 1978, Vernon Hardin, an inspector from the Department of Labor's Mine Safety and Health Administration, began a specialized electrical inspection of a coal mine and preparation plant operated by Kentland-Elkhorn Coal Corporation. The purpose of the inspection, which lasted at least 21 days, was to make a "complete electrical examination of the ... mine and preparation plant." The inspector used equipment such as voltmeters and ohmmeters for testing electrical circuits. By coincidence, the electrical inspection took place when another inspector was making a "regular inspection", i.e., one of the four inspections of an entire mine that the third sentence of section 103(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. ["the 1977 Act"] requires the Secretary to conduct every year. Judge Lasher found, and it is not disputed, that the

specialized electrical inspection was not conducted as a part of the regular inspection, and that the regular inspection was conducted independently by the other inspector.

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On May 23 and 24, 1978, Douglas Blackburn, a miner employed by Kentland-Elkhorn accompanied inspector Hardin during the electrical inspection as the miners' representative. Before the inspection began, Kentland-Elkhorn officials informed Hardin that Blackburn would not be paid for the time he spent accompanying Hardin. Blackburn was not paid, and on June 20, 1978, Hardin issued to Kentland-Elkhorn a citation under section 104(a) of the 1977 Act alleging a violation of section 103(f). The alleged violation was not abated by the time fixed in the citation, and, on June 23, 1978, Hardin issued a withdrawal order under section 104(b). The order, which did not require the withdrawal of miners from mining operations, was terminated 20 minutes after its issuance, after Kentland-Elkhorn officials paid Blackburn for his time.

Kentland-Elkhorn then sought Commission review of the citation and withdrawal order, and a hearing was held before Judge Lasher. Kentland-Elkhorn argued to Judge Lasher that the right to "walkaround pay" granted by section 103(f) is confined to regular inspections, and cited the language and the legislative history of section 103(f) to support its argument. The Judge concurred in this view, and vacated the citation and withdrawal order. The Secretary filed a petition for discretionary review, which we granted on April 11, 1979. On July 31, 1979, we heard oral argument in this case and in Helen Mining Co., No. PITT 79-11-P, decided on November 21, 1979.

In Helen Mining, we decided a question similar to this one. We found that section 103(f) of the 1977 Act is ambiguous and did not clearly point to a solution to the problem raised there. We examined the portion of the legislative history upon which Kentland-Elkhorn relies here--a statement by Representative Perkins to the House of Representatives stating the intention of the conference committee to limit the right to walkaround pay to regular inspections--and found it dispositive of the question there. We arrive at the same conclusion here. As in Helen Mining, the words of the statute standing alone do not clearly support the position of any party, and we believe that the intention of Congress to limit walkaround pay to regular inspections was most clearly evidenced by Mr. Perkins' statement.

Accordingly, the judge's decision is affirmed.

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Commissioner Jestrab, dissenting:

I join my colleague, Commissioner Lawson, in dissenting from the majority opinion. There is no inspection described as "regular" in the 1977 Act. The statutory authority for the inspection here is section 103(a). Section 103(f) expressly requires the payment of walkaround pay. A fortiori, my dissent in Helen Mining Company, No. PITT 79-11-P, is applicable here.

Commissioner Lawson, dissenting:

In Helen Mining Company, No. PITT 79-11-P, the majority denied walkaround pay "during a 'spot' inspection required by section 103(i)" of the 1977 Act. In the present decision the majority, without determining the statutory authorization for the electrical inspection, appears to be extending its holding in Helen and to deny walkaround pay for all inspections except so-called "regular inspections."

For the reasons stated in my dissent in Helen Mining, I find section 103(f) of the Act to be clear and unambiguous in mandating walkaround pay for all inspections made pursuant to section 103(a) without regard to their frequency. This inspection is authorized by section 103(a) and a miner accompanying the inspector is therefore entitled to walkaround pay.

I therefore dissent.