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MAGMA COPPER V. MSHA & UNITED STEEL WORKERS
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
December 10, 1979

MAGMA COPPER COMPANY

v.

SECRETARY OF LABOR, Docket No. DENV 78-533-M
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

and

UNITED STEELWORKERS OF AMERICA

DECISION

The question in this case is whether a mine operator is required to pay only one representative of miners for time spent accompanying an inspector when the inspection is divided into two or more parties to simultaneously inspect different parts of a mine. For the reasons that follow, we find that one miners' representative in each inspection party must be paid for time spent accompanying an inspector who is engaged in an inspection of the mine "in its entirety" under 103(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. ["the 1977 Act"].

Magma Copper Company operates a large copper mine complex near San Manuel, Arizona. The complex includes an underground copper mine and milling facilities. On July 26, 1978, two inspectors from the Department of Labor's Mine Safety and Health Administration arrived at the complex to continue an inspection of the milling facilities that had begun the previous week under section 103(a) of the 1977 Act. That section requires that each surface mine be inspected in its entirety at least two times a year and that each underground mine be inspected in its entirety at least four times a year.

Magma's milling facilities consist of several buildings and other structures. The milling operation includes a receiving bin, a crushing facility, a concentrator building, a molybdenum plant, and a filter plant. One building is three floors high and a quarter mile long. The structures in the complex are as much as seven miles apart.

To expedite inspection of the milling facilities, the inspectors formed two inspection parties to visit different work sites. They told Magma officials that they would like a miners' representative to accompany each of them. Magma officials agreed to assign two miners' representatives to accompany the inspectors but they stated that Magma would pay only one of them. Only one miners' representative accompanied an inspector.

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The other inspector was not accompanied by a miners' representative because the inspectors were reluctant to ask a miner to accompany them without a guarantee that he would suffer no loss of pay.

The inspectors examined different milling facilities. Their activities took them about 6 to 7 miles apart, and consumed several hours. They did not see each other again until they returned to one of Magma's offices to perform some post-inspection paperwork.

Because of Magma's refusal to pay two miners' representatives for time spent accompanying the inspectors, a citation under section 104(a) of the 1977 Act that alleged a violation of section 103(f) was issued. When Magma again declined to pay two miners' representatives, one of the inspectors issued a withdrawal order for failure to abate under section 104(b). The order did not require the withdrawal of any miners from mining operations. Magma then filed a notice of contest under section 105(d) of both the citation and the withdrawal order.

Administrative Law Judge Lasher conducted a hearing and decided that because of the language of section 103(f), 1/ only one miners' representative was entitled to be paid for participating in the inspection.

1/ Section 103(f) of the 1977 Act reads as follows:

[1] Subject to regulations issued by the Secretary, a representative of the operator and a representative authorized by his miners shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any coal or other mine made pursuant to the provisions of subsection (a), for the purpose of aiding such inspection and to participate in pre- or post-inspection conferences held at the mine.

[2] Where there is no authorized miner representative, the Secretary or his authorized representative shall consult with a reasonable number of miners concerning matters of health and safety in such mine. [3] Such representative of miners who is an employee of the operator shall suffer no loss of pay during the period of his participation in the inspection made under this subsection. [4] To the extent that the Secretary or authorized representative of the Secretary determines that more than one representative from each party would further aid the inspection, he can permit each party to have an equal number of such additional

representatives. [5] However, only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation under the provisions of this subsection. [6] Compliance with this subsection shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act. [Sentence numbers and emphasis added.]

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Specifically, he held:

Where a single regular "entire mine" inspection is being conducted pursuant to section 103(a) of the [1977] Act by two or more inspectors, only one representative of miners is entitled to participate in the inspection without loss of pay even though the group conducting the inspection is divided into two or more parties to simultaneously inspect different parts of the mine.

Judge Lasher believed that this interpretation of the walkaround pay provision was necessary because section 103(f) provides in part that "only one such representative of miners who is an employee of the operator shall be entitled to suffer no loss of pay during the period of such participation . . ." He consequently vacated the citation and withdrawal order. On April 11, 1979, the Commission granted petitions for discretionary review filed by the Secretary of Labor and the United Steelworkers of America. On July 31, 1979, we heard oral argument.

We do not think it is enough to rely, as the administrative law judge did, only upon the literal language of section 103(f). The literal words of a statute may not be the best guide to the legislative purpose when they appear to conflict with the congressional purpose for creating a right or produce a result that is illogical. See *Central Hanover Bank & Trust Co. v. Commissioners*, 159 F.2d 167, 169 (2d. Cir. 1947)(per L. Hand, J.); *United States v. American Trucking Associations*, 310 U.S. 534, 543 (1940). 2/

2/ In our view, the legislative history does not specifically address the question before us. Magma disputes this. It claims that a statement made by Senator Javits on the Senate floor directly addresses this issue and authoritatively resolves it in Magma's favor. We disagree.

During the Senate debate on the bill from which the 1977 Act was largely derived, Senator Helms introduced an amendment to strike out the third and fifth sentences of what is now section 103(f), and thereby eliminate the right to walkaround pay. 1977 Legis. Hist. at 809, 812. Senator Javits, speaking in opposition to the amendment of behalf of the bill's managers, gave several reasons why the amendment should be defeated. *Id.* at 1054-1056. During his lengthy remarks, he commented that the bill required that only one miners' representative be paid. *Id.* at 1055-1056. Magma believes that Senator Javits' comment shows that section 103(f) was designed with multiple inspection parties in mind. We do not. Although Senator

Helms had briefly mentioned multiple inspection parties, Senator Javits' extemporaneous remarks neither bear upon nor mention multiple parties. The Senator seems to have spoken only to the common and simple situation of one or more inspectors forming only one inspection party. We therefore conclude that the legislative history does not speak directly to the issue before us.

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The language of section 103(f) conveys the impression that Congress expected that one inspection party will visit all parts of the mine and one paid miners' representative will therefore fully participate in the inspection. The walkaround pay limitation appears designed to minimize the operator's economic burden by requiring him to pay only one miner who is in that one inspection party.

However, several inspectors are often sent into large mines to expedite inspection of the entire mine. 3/ Providing walkaround pay only to one miners' representative when several inspection parties are inspecting the entire mine would make the right to walkaround pay dependent on the number of inspectors sent to the mine. We agree with the Secretary that it is doubtful that Congress intended this illogical result. This operator has made no showing in this case that the presence of two inspection parties prejudiced him.

In our view, the Congressional purpose for limiting walkaround pay would not be frustrated by requiring that one miner in each inspection party be paid. We share the Secretary's judgment that the cost to an operator of walkaround pay when two inspection parties are formed should roughly approximate the cost when only a single party is formed because the number of hours spent by paid miners' representatives in the inspection should be about the same in both cases. We also believe that the construction of 103(f) urged by Magma would frustrate the purposes for which Congress granted a right to walkaround pay. Walkaround pay was designed to improve the thoroughness of mine inspections and the level of miner safety consciousness. The first sentence of section 103(f) expressly states that the purpose of the right to accompany inspectors is to aid the inspection. The Senate committee report on S. 717, 95th Cong., 1st Sess. (1977), the bill from which section 103(f) is derived, explained that the purpose of the right to accompany an inspector is to assist him in performing a "full" inspection, and "enable miners to understand the safety and health requirements of the Act and [thereby] enhance miner safety and health awareness " S. Rep No. 95-181 95th Cong., 1st Sess., at 28-29 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 616-617 (1978) ["1977 Legis. Hist."]. The purpose of the right to walkaround

3/ A report by the National Coal Association and the Bituminous Coal Operators Association that was submitted to the Labor Standards Subcommittee of the House Committee on Education and Labor states:

Some coal mines are very large: one mine, for instance,

is the size of the island of Manhattan underground. That mine, along with many others, employs several hundred miners who work in separate geographical underground areas at many diverse tasks under varying degrees of supervision.

It is common for miners to have to travel an hour or more underground just to get to their work areas from the mine entrance. Thus, a "complete inspection" of an entire mine can take a very long time.

NCA, BCOA, "Federal Coal Mine Health and Safety Act of 1969: A Constructive Analysis with Recommendations for Improvements, at 30 (1977).

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pay granted by section 103(f) is also clear: to encourage miners to exercise their right to accompany inspectors. Id. 4/

It was Congress' judgment that a failure to pay miners' representatives to accompany inspectors would discourage miners from exercising their walk-around rights, and that the resulting lessening of participation would detract from the thoroughness of the inspection and impair the safety and health consciousness of miners. If only one of the inspectors would be assured of receiving the assistance of a miners' representative when conducting a 103(a) inspection of the mine, only a part of the mine would be likely to receive the kind of inspection that Congress expected the walkaround pay right to help assure. By providing a more efficient deployment of inspectors through multiple inspection parties, the Secretary should not be denied the assistance of the miner. Neither should the miner be denied the right to participate in such inspection with pay.

4/ The Senate committee report states:

Section 104(e)[103(f) in the final bill] contains a provision based on that in the Coal Act, requiring that representatives of the operator and miners be permitted to accompany inspectors in order to assist in conducting a full inspection The opportunity to participate in pre- or post-inspection conferences has also been provided. Presence of a representative of miners at opening conference helps miners to know what the concerns and focus of the inspector will be, and attendance at closing conference will enable miners to be fully apprised of the results of the inspection. It is the Committee's view that such participation will enable miners to understand the safety and health requirements of the Act and will enhance miner safety and health awareness. To encourage such miner participation, it is the Committee's intention that the miner who participates in such inspection and conferences be fully compensated by the operator for time thus spent. To provide for other than full compensation would be inconsistent with the purpose of the Act and would unfairly penalize the miner for assisting the inspector in performing his duties

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Accordingly, the judge's decision is reversed, and the citation and withdrawal order are affirmed.

Jerome R. Waldie, Chairman