

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

AUG 02 2018

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

v.

ROCKWELL MINING, LLC

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Docket No. WEVA 2017-220

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

DECISION

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act” or “Act”). On May 9, 2018, an Administrative Law Judge issued a decision denying a motion to approve a settlement between the Secretary of Labor and Rockwell Mining, LLC. On June 5, 2018, the Judge issued an order certifying his ruling for interlocutory review pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76.

On June 25, 2018, we granted interlocutory review on the question of whether the Judge applied an incorrect legal standard and abused his discretion in denying the motion to approve settlement. We also stated that this case presents an issue that is before the Commission in *The American Coal Co.*, Docket No. LAKE 2011-13 (“*AmCoal*”), and stayed this proceeding pending further order of the Commission.

We hereby lift the stay in this proceeding.¹ We conclude that the Judge applied an incorrect legal standard in denying the settlement motion and abused his discretion. For the reasons discussed below, we vacate the Judge’s order denying the settlement motion and remand for further proceedings.

I.

Factual and Procedural Background

This case involves seven citations, for which the Secretary initially proposed penalties in the sum of \$6,977. On November 30, 2017, the Secretary filed a settlement motion agreed to by both parties. By the terms of that settlement, one citation would be vacated and six citations would be affirmed. Three of the six citations would be affirmed as issued and their civil penalty

¹ On this same date, we also issue our decision in *AmCoal*.

amounts would remain as proposed by the Secretary. The penalties for Citations Nos. 9068232, 9070540 and 9070542, however, would be reduced under the terms of the settlement.

With respect to Citation No. 9068232, which alleged a rib control violation, the penalty would be reduced from \$446 to \$244. In support of the reduction, the motion to approve settlement states that Rockwell argued that evidence would establish that it was not negligent, that it was taking steps to control the ribs by installing rib bolts, and that the cited rib conditions likely occurred after the most recent examination of the area. The motion also provides that the “Secretary notes that no rock dust was observed in the cracks in the ribs indicating that the cracks were fairly recent.” Mot. at 3.

With regard to Citation No. 9070540, which alleged a failure to maintain required clearance in an escapeway due to a parked mantrip, the penalty would be reduced from \$2,598 to \$2,000. The settlement motion sets forth Rockwell’s argument that it was not negligent because there was no evidence as to how long the mantrip was parked or that management was aware of it.

As to Citation No. 9070542, which alleged a cable splicing violation, the penalty would be reduced from \$666 to \$443. The motion states that Rockwell argued that the levels of gravity and negligence were “overwritten” and that the violation was not of a significant and substantial nature because there were no exposed inner leads in the splice, that the cable was continually moved, and that the damage likely occurred sometime after the most recent weekly electrical examination. Mot. at 4.

The Judge denied the settlement on the basis that it lacked sufficient factual support. The Judge concluded that there was no representation by the parties that there is a legitimate dispute on any issue of fact or law. In his order certifying his denial for interlocutory review, the Judge explained that it was “insufficient for the Secretary to merely *identify* the Respondent’s contentions.” Order dated June 5, 2018 at 3 (emphasis in original). Rather, in his view, the Secretary must acknowledge that the “Respondent has identified legitimate issues of fact, which matters are in dispute and which can only be resolved by the hearing process.” *Id.* He concluded that no information was presented to help him discern whether there was a legitimate dispute of fact or law with respect to Citation Nos. 9070540 and 9070542. As to Citation No. 9068232, he determined that the Secretary’s observation regarding the lack of rock dust observed in the ribs’ cracks was insufficient without a representation from the parties that there was a legitimate dispute of fact or law.

II.

Disposition

The Commission reviews a Judge's denial of a proposed settlement under an abuse of discretion standard. *Sec'y of Labor on behalf of Shemwell v. Armstrong Coal Co.*, 36 FMSHRC 1097, 1101 (May 2014).² When the Commission and its Judges evaluate settlement motions, we consider "whether the settlement of a proposed penalty is fair, reasonable, appropriate under the facts, and protects the public interest." *The American Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016).

The Commission and its Judges "must have information sufficient to carry out this responsibility." *Id.* at 1981. Consequently, through its procedural rules, the Commission has required parties to submit facts supporting a penalty amount agreed to in settlement. *Id.* In particular, Commission Procedural Rule 31 requires that a motion to approve penalty settlement must include for each violation "the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties." 29 C.F.R. § 2700.31(b)(1).

We conclude that the Judge erred in his denial of the settlement motion. First, he did not refer to or apply the standard set forth above that we use for evaluating penalty reductions in settlement.

Second, the Judge erred in concluding that a motion to approve settlement must include an acknowledgement by the Secretary that the Respondent's assertions present legitimate questions of fact which are in dispute and can only be resolved through the hearing process. As we stated in our *AmCoal* decision issued today, facts alleged in a proposed settlement need not demonstrate a "legitimate" disagreement that can only be resolved by a hearing. The Commission's Procedural Rules and precedents do not contain such a requirement.

Rather, the Commission has recognized that parties may submit facts that reflect a mutual position that the parties have agreed is acceptable to them in lieu of the hearing process. *See Amax Lead Co. of MO*, 4 FMSHRC 975, 977 (June 1982) ("Inherent in the concept of settlement is that the parties find and agree upon a mutually agreeable position that resolves the dispute and obviates the need for further proceedings."). Put another way, the facts required by Rule 31 may include a description of an issue on which the parties have agreed to disagree. The Commission does not require concessions from parties in settlement as long as the parties provide mutually acceptable facts that demonstrate the proposed penalty reduction is fair, reasonable, appropriate under the facts, and protects the public interest.

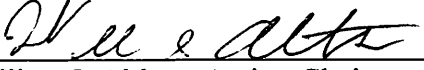
Accordingly, we conclude that the Judge applied an incorrect legal standard in denying the settlement motion and abused his discretion in denying the motion to approve settlement.

² An abuse of discretion may be found where there is no evidence to support the Judge's decision or if the decision is based on an improper understanding of the law. *The American Coal Co.*, 38 FMSHRC 1972, 1976 (Aug. 2016).

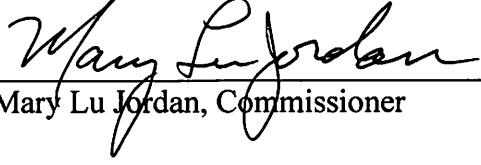
III.

Conclusion

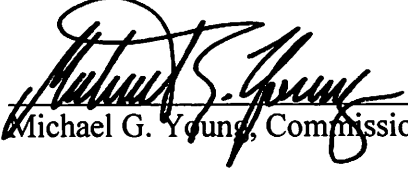
For the reasons set forth above, we hereby vacate the Judge's decision denying the settlement and remand this matter to the Judge for reconsideration consistent with this opinion and our decision in *AmCoal* issued on this date.



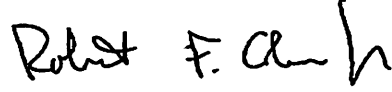
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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