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UNITED STATES STEEL CORPORATION .SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

UNITED STATES STEEL CORPORATION,
APPLICANT

Application for Review

Docket No. HOPE 79-251

v.

Order No. 254311

January 12, 1979

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

Gary No. 4 Mine

UNITED MINE WORKERS OF AMERICA,
RESPONDENT

DECISION

Appearances: Billy M. Tennant, Esq., United States Steel Corporation,
Pittsburgh, Pennsylvania, for Applicant
Joseph M. Walsh, Esq., Office of the Solicitor, Depart-
ment of Labor, Arlington, Virginia, for Respondent MSHA

Before: Judge Merlin

This case is an application for review filed by United States Steel Corporation to review an order of withdrawal issued under section 104(d) of the Act.

The order alleges a violation of section 90.40 of the mandatory standards. At issue, is whether section 90.40 covers retransfers of miners originally transferred under section 203(b) of the Act. Immediately preceding the hearing in this case, a hearing was held in Docket No. HOPE 79-246 which presented the same issue. In Docket No. HOPE 79-246, I issued a bench decision holding that the mandatory standards as presently written do not cover retransfers and reassignments.

At the hearing on this case, the parties agreed that the determination in HOPE 79-246 is determinative of the instant matter. Accordingly, the Solicitor moved to vacate the subject order on the condition that it could be reissued if the Secretary decides to appeal HOPE 79-246 and if upon so doing, he is successful. The motion to vacate the order on this condition was granted from the bench. The operator then moved to withdraw its application for review. The motion also was granted from the bench.

~359

The determinations made from the bench are hereby AFFIRMED and this case is therefore, DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge