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KENNECOTT COPPER V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

KENNECOTT COPPER CORPORATION,
APPLICANT

Application for Review

v.

Docket No. DENV 79-457-M
Citation No. 336249 2-13-79

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

Bingham Canyon Mine

DECISION

Appearances: James B. Lee, Esq., and James M. Elegante, Esq., Parsons Behle & Latimer, Salt Lake City, Ut, for Applicant; Stephen P. Kramer, Esq., Office of the Solicitor, U.S. Department of Labor, for Respondent

Before: Administrative Law Judge Michels

This proceeding involves an application for review of Citation No. 336249, issued at Applicant's Bingham Canyon Mine on February 13, 1979, charging a violation of 30 CFR 55.12-45. Kennecott Copper Corporation filed its application on March 13, 1979, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(d). MSHA filed an answer on March 30, 1979, admitting the issuance of the citation and asserting that it was properly issued.

A hearing was held in Salt Lake City, Utah, on May 15 and 16, 1979. Both parties were represented by counsel. No representatives of the miners appeared as a party; however, representatives of certain unions appeared as witnesses for the Applicant and testified in opposition to the MSHA charge. These were Joseph Dispenza, President of United Steel Workers Local 485 (Tr.180-186); Robert D. Nicholls, Executive Board, Local 1081, International Brotherhood of Electrical Workers (IBEW) (Tr. 186-196); Arthur Don Beals, Business Manager, (IBEW) (Tr. 196-200); Ben E. McAlester, Jr., Secretary of United Transportation Union Local 1615 (Tr. 214-218). Mr. Dispenza also wrote a letter to the Federal Mine Safety and Health Review Commission on April 19, 1979, protesting a requirement that the steel towers be grounded to the track.

On July 26, 1979, pursuant to the Commission's Interim Procedural Rules at 29 CFR 2700.15(a), Applicant filed a motion requesting permission to withdraw its application for review. As grounds for its proposed action, Applicant advised that MSHA has concluded that the

