

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

7 AUG 1980

LOCAL UNION 6025, UNITED MINE : Application for Review of
WORKERS OF AMERICA, : Discrimination Complaint
Applicant :
: Docket No. WEVA 80-429-D Formerly
: No. HOPE CD 80-41;
: HOPE CD 80-42; HOPE CD 80-43
: HOPE CD 80-44; HOPE CD 80-45
v. : HOPE CD 80-46; HOPE CD 80-47
: HOPE CD 80-48; HOPE CD 80-49
BISHOP COAL CO., :
Respondent : Bishop Mine

DECISION AND ORDER DISMISSING PROCEEDINGS

This case concerns a complaint of discrimination filed pursuant to section 105(c) of the Federal Mine Safety and Health Act of 1977, on July 30, 1979, on behalf of various employees of Respondent, Bishop Coal Company.

The complaint alleges that Respondent's failure to pay employee representation for the time spent accompanying Federal inspectors on "non-regular" inspections constitutes a violation of sections 103(f) and 105(c) of the Federal Mine Safety and Health Act of 1977.

Upon receipt of the complaint, the Secretary conducted an investigation. On May 2, 1980, the Secretary notified Applicant, in writing, of the determination that a violation of the Act had not occurred.

On June 2, 1980, the Applicant filed its complaint with the Commission. Respondent's answer and motion for summary decision and dismissal were filed on June 17, 1980. Respondent moved that the case be dismissed with prejudice for failure to state a claim upon which relief can be granted citing Helen Mining Company, 1 FMSHRC 1796 (1979); Kentland-Elkhorn Coal Corporation, 1 FMSHRC 1833 (1979); and Magma Copper Company, 1 FMSHRC 1948 (1979) as dispositive of this action in that employee representatives are not entitled to compensation for the time spent accompanying MSHA inspectors during spot inspections of a mine.

On June 27, 1980, Applicant filed its response to Respondent's motion in the form of a motion to stay proceedings 1/, claiming, inter alia, that the cases cited by Respondent are not **dispositive** of the **primary** allegation made in the complaint, namely, whether Respondent's policy of **compensating** its supervisory personnel but not its employee representatives, for time spent accompanying **MSHA** officials on all non-regular inspections constitutes unlawful discrimination under **105(c)** of the Act. Applicant also claimed that the cited cases were erroneously decided and that **MSHA's** policy of abiding by them pending applicable review interferes with the rights of miners' representatives to carry out the purposes of the Act.

DISCUSSION

The facts upon which Applicant relies in its complaint are not in dispute. Applicant admits therein and the record is otherwise clear that none of the inspections were "regular" inspections.

I conclude that Respondent's position is meritorious and that it is entitled to summary decision as a matter of law. Judge Koutras aptly pointed out in Island Creek Coal Company and Virginia Pocahontas Company v. MSHA and UMWA, Docket Nos. VA 79-601, 62, and 63-R, (decided June 3, 1980), that the **Commission** has decided the issues presented in these type proceedings with finality and has held that miners' representatives are not entitled to be compensated for the time spent on walkarounds during the course of a spot inspection. That precedent is controlling in these **proceedings.**2/The fact that MSHA and the **UMWA** have seen fit to appeal the Commission's final rulings is no basis for staying these proceedings. Applicant's motion for a stay of these proceedings, is denied.

I conclude that the Commission's precedent decisions with respect to the rights of a miner to be compensated during a spot walkaround inspection are dispositive of the issues presented here and that Respondent is entitled to summary decision as a matter of law.

Accordingly, Respondent's motion for summary decision is granted and this case is dismissed with prejudice.

ORDER

Applicant's complaint is DISMISSED with prejudice.


Michael A. Lasher, Jr., Judge

1/ Applicant's motion for staying proceedings constitutes a response to **Respondent's motion** for summary decision and dismissal since Applicant dealt therein with Respondent's motion.

2/ The fact that Respondent pays its supervisory employees for time spent on non-regular inspections is irrelevant to this holding.

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