

CCASE:  
MONTEREY COAL v. SOL (MSHA)  
DDATE:  
19810305  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

MONTEREY COAL COMPANY,  
CONTESTANT

Contests of Citations

v.

- Docket No. HOPE 78-469
- Docket No. HOPE 78-470
- Docket No. HOPE 78-471
- Docket No. HOPE 78-472
- Docket No. HOPE 78-473
- Docket No. HOPE 78-474
- Docket No. HOPE 78-475
- Docket No. HOPE 78-476

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

UNITED MINE WORKERS OF  
AMERICA (UMWA),  
RESPONDENTS

Wayne Mine

ORDER GRANTING MOTION TO WITHDRAW  
AND  
DISMISS NOTICE OF CONTESTS

Statement of the Proceedings

These consolidated review cases were adjudicated by Judge Franklin P. Michels, and he issued his decisions on February 15, 1979. On November 13, 1979, the Commission reversed and remanded the cases to him for further proceedings. Subsequently, Monterey Coal Company filed a petition under section 106(a)(1) of the Act with the Fourth Circuit Court of Appeals for review of the Commission's decision, and on November 17, 1980, the Court dismissed Monterey's petition as premature without prejudice to its right to seek further review of the issues raised before the Commission.

In view of Judge Michels' retirement, the cases were assigned to me for further adjudication, and in order to insure the timely adjudication and disposition of the cases, I issued an order on January 13, 1981, directing the parties to inform me as to the the following:

1. The issues that remain to be tried and a time frame for the scheduling of any additional hearings which may be required.
2. Any additional information or dispositions which may be contemplated by the parties so as to enable me to timely dispose of the cases.

On February 18, 1981, in response to my order, contestant filed a motion to withdraw its contests on the ground that while its court litigation was pending the Secretary promulgated new regulations regarding

~624

imposition of liability on independent contractors for violations caused by them or under their control, 30 C.F.R. Part 45. Given the fact that those regulations have resolved the major issue litigated by the contestant before the Commission in these dockets, contestant asserts that it has no further interest in pursuing these 105(d) Notice of Contest proceedings, and requests that its motion to withdraw these notices of contest be granted.

On February 18, 1981, respondent UMWA filed its response to my order and stated that it does not believe that there are any additional facts which need to be litigated. Further, the UMWA states that it believes that any further adjudication and decision by me in these dockets may be made from the present record made before Judge Michels, and that should I decide that additional hearings are required, it does not intend to put on any additional witnesses or submit any additional documentary evidence, but would be willing to submit briefs if they should be required.

On February 27, 1981, respondent MSHA filed its response to my order and stated that it does not oppose contestant's motion to withdraw its contests. MSHA asserted that considering the fact that the Secretary, Monterey, and the independent contractor, Frontier-Kemper Contractors, Inc., have reached a settlement of the civil penalties assessed for the violations in question, and that payment has been made for those violations, MSHA does not oppose the contestant's motion to withdraw its contests.

#### ORDER

In view of the foregoing, and upon consideration of the arguments presented by the parties in response to my order, contestant's motion to withdraw its contests is GRANTED, and they are DISMISSED.

George A. Koutras  
Administrative Law Judge