

CCASE:  
SOL (MSHA) V. LEON'S COAL  
DDATE:  
19820406  
TTEXT:

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

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

Complaint of Discharge,  
Discrimination, or Interference

Docket No. CENT 80-339-D

ON BEHALF OF  
GEORGE W. HEINEY AND  
JOHN GHARAMM,  
COMPLAINANTS

Green Country Mine

v.

LEON'S COAL COMPANY,  
LEON WALKER, AND ROBERT HARTLEY,  
RESPONDENTS

DECISION FINDING JURISDICTION AND APPROVING SETTLEMENT

Appearances: Eloise Vellucci, Esq., Office of the Solicitor, U.S.  
Department of Labor, Dallas, Texas, for Complainants  
Jot Hartley, Esq., Pitcher, Castor and Hartley, Vinita,  
Oklahoma, for Respondents, Leon's Coal Company and Robert  
Hartley  
Ross Hutchins, Esq., Tulsa, Oklahoma on behalf of Complainant  
Leon Walker  
Lance A. Pool, Esq., Pitchard, Norman and Wohlguth,  
Tulsa Oklahoma for the Trustee in Bankruptcy

Before: Judge Melick

This case is before me upon the complaints by the Secretary  
of Labor on behalf of George W. Heiney and John Ghramm, under  
section 105(c)(2) of the Federal Mine Safety and Health Act of  
1977, (FOOTNOTE 1) 30 U.S.C. 801 et seq.,

~573

the "Mine Safety Act," alleging that Leon's Coal Company, a partnership, and Leon Walker and Robert Hartley, as individuals, discharged Heiney and Ghramm in violation of section 105(c)(1) of the Act. (FOOTNOTE 2) An evidentiary hearing commenced March 16, 1982. On March 17, 1982, the parties proposed an agreement to settle the case.

Jurisdiction

At hearing, the Respondent's and the trustee in bankruptcy had alleged that the Federal Mine Safety and Health Review Commission had no jurisdiction to proceed with this case in light of the filing by Leon's Coal Company of a petition for bankruptcy (Civil Action No. 80-00873 in the United States Bankruptcy Court, Northern District of Oklahoma, Tulsa Division). They argued that these proceedings were automatically stayed by the Bankruptcy Act of 1978 and, in particular, under the provisions of 11 U.S.C. 362(a)(1). At hearing, I held in a bench decision that enforcement proceedings before the Federal Mine Safety and Health Review Commission brought by the Secretary of Labor under section 105(c)(2) of the Mine Safety Act come within a statutory exception to the automatic stay provisions of the Bankruptcy Act.

The automatic stay provisions under 11 U.S.C. 362 read in part as follows:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; \* \* \*

Exceptions to the automatic stay are also provided under 11 U.S.C. 362 and one of those exceptions reads as follows:

(b) The filing of a petition under section 301, 302, or 303 of this title does not operate as a stay -  
\* \* \*

(4) under subsections (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental units police or regulatory power; (5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental units police or regulatory power;

Since the Department of Labor is clearly a governmental unit the only issue is whether this case was one to enforce the police or regulatory powers of that governmental unit. The instant action was brought under the provisions of section 105(c)(2) of the Mine Safety Act to enforce the Federal law regulating certain relationships between mine operators and miners and to prevent

retaliation by mine operators against miners exercising rights protected under the Mine Safety Act. Footnotes1 and2 supra. This is clearly an exercise of police and regulatory powers which places this proceeding within the section 362(b)(4) exemption to the automatic stay. NLRB v. Evans Plumbing Company, 639 F.2d 291 (5th Cir. 1981); In re Bel Air Chateau Hospital, Inc., 611 F.2d 1248 (9th Cir. 1979), and In the Matter of Shippers Interstate Service, Inc., 618 F.2d 9 (7th Cir. 1980). Accordingly, in spite of the pendency of bankruptcy proceedings this Commission retained jurisdiction to proceed with hearings in the captioned case and to issue a decision and order approving settlement.

Proposal for Settlement

During the hearings in this case, the Secretary proposed a settlement agreement wherein George W. Heiney would receive a back pay award of \$3,650, John Ghramm would receive a back pay award of \$2,440, and the Complainants and the Secretary would withdraw all other claims in the case including the Secretary's request for a civil penalty. The individual Complainant's, Mssrs. Heiney and Ghramm consented to the proposal on the record and I find that consent to have been intelligent and voluntary. The Respondent's, through counsel, also accepted the proposal on the record. Under all the circumstances, I found that the settlement was appropriate. That bench determination is now affirmed.

ORDER

Leon's Coal Company, Leon Walker, and Robert Hartley are hereby ORDERED TO PAY George W. Heiney the sum of \$3,650 as an award of back within 30 days of the date of this decision.

Leon's Coal Company, Leon Walker, and Robert Hartley are FURTHER ORDERED TO PAY John Ghramm the sum of \$2,440 as an award of back pay within 30 days of the date of this decision.

The request of the Secretary of Labor to withdraw his proposal for a civil penalty is GRANTED.

The Complaint herein is DISMISSED.

Gary Melick  
Assistant Chief Administrative Law Judge

AA

~FOOTNOTE ONE

1 Section 105(c)(2) of the Mine Safety Act reads as follows:

"Any miner or applicant for employment or representative of miners who believes that he has been discharged, interfered with, or otherwise discriminated against by any person in violation of this subsection may, within 60 days

after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall forward a copy of the complaint to the respondent and shall cause such investigation to be made as he deems appropriate. Such investigation shall commence within 15 days of the Secretary's receipt of the complaint, and if the Secretary finds that such complaint was not frivolously brought, the Commission, on an expedited basis upon application of the Secretary, shall order the immediate reinstatement of the miner pending final order on the complaint. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall immediately file a complaint with the Commission, with service upon the alleged violator and the miner, applicant for employment, or representative of miners alleging such discrimination or interference and propose an order granting appropriate relief. The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section) and thereafter shall issue an order, based upon findings of fact, affirming, modifying, or vacating the Secretary's proposed order, or directing other appropriate relief. Such order shall become final 30 days after its issuance. The Commission shall have authority in such proceedings to require a person committing a violation of this subsection to take such affirmative action to abate the violation as the Commission deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner to his former position with back pay and interest. The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to his paragraph."

~FOOTNOTE TWO

2 Section 105(c)(1) of the Mine Safety Act reads as follows:

"No person shall discharge or in any manner discriminate against or cause to be discharge or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of the miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.