

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

May 21, 1982

|                        |   |                            |
|------------------------|---|----------------------------|
| UNITED MINE WORKERS    | : | NOTICE OF CONTEST          |
| OF AMERICA,            | : |                            |
| Contestant             | : | Docket No. LAKE 82-70-R    |
|                        | : |                            |
| v.                     | : | Order No. 1226709; 3/15/82 |
|                        | : |                            |
| SECRETARY OF LABOR,    | : | Saginaw Mine               |
| MINE SAFETY AND HEALTH | : |                            |
| ADMINISTRATION (MSHA), | : |                            |
| Respondent             | : |                            |

ORDER OF DISMISSAL

On March 15, 1982, an MSHA inspector issued a withdrawal order under section 104(d) (1) of the Act citing a violation of 30 CFR 75.200. On March 16, 1982, the order was terminated. On March 19, 1982, the withdrawal order was vacated on the ground that it had been issued in error.

The Contestant union challenges the vacating of the withdrawal order. I conclude Contestant does not have that right under the Act.

Under section 105(d) of the Act a representative of miners may contest "the issuance, modification, or termination of any order." The Act does not give the representative of miners the right to challenge the vacating of an order. The term "**vacating**" is used elsewhere in the Act including a subsequent phrase of the same sentence of section 105(d). Congress gave each of the terms "issuance", "modification", "termination" and "vacation" its own separate and discrete meaning and in dealing with these terms Congress has acted with great specificity. If Congress wished the union to have the right to challenge the vacating of an order it would have expressly so provided as it did with respect to other actions that are taken with respect to orders. In view of the precise delineations set forth in 105(d) there is no basis to expand by implication the rights granted therein or to read into it any other part of the Act such as

104(h). It is clear therefore, that only the designated actions regarding orders may be disputed by a miner's representative. The preciseness of section 105(d) previously has been recognized in other contexts. United Mine Workers of America v. Secretary of Labor, 3 FMSHRC 2016 (August 28, 1981); Chester M. Jenkins v. Secretary of Labor, 3 FMSHRC 2175 (September 22, 1981).

In light of the foregoing, this case is DISMISSED.

A handwritten signature in black ink that reads "Paul Merlin". The signature is fluid and cursive, with a large initial "P" and "M".

Paul Merlin  
Chief Administrative Law Judge

Distribution: Certified mail.

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