

CCASE:
SOL (MSHA) V. FAIRFAX TRUCKING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF JOSEPH PASTINE,
APPLICANT

Complaint of Discharge
Discrimination or Interference

Docket No: WEVA 81-393-D
MORG CD 81-16

v.

Susan No. 1 Mine

FAIRFAX TRUCKING COMPANY,
RESPONDENT

ORDER GRANTING MOTION TO WITHDRAW

MSHA, with the consent of Mr. Pastine, has moved to withdraw its complaint of discrimination that it filed on Mr. Pastine's behalf. Its reason for filing the motion is that subsequent investigation has indicated that there was no violation.

MSHA has stated that its position is that Mr. Pastine should be able to file his own complaint under Section 105(c)(3) of the Act within 30 days after the case is dismissed if he chooses to do so. The Act, however, does not address the situation where the government files an action on a miner's behalf and later changes its mind and obtains a dismissal of the case. The government's proposition is equitable, however, and if Mr. Pastine should choose to file an action on his own behalf he would certainly have an arguable position. But I do not see that any ruling that I might make in the instant case could have any effect on a case he might file in the future.

The Motion to withdraw is granted and the case is dismissed.

Charles C. Moore, Jr.
Administrative Law Judge