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

U.S. STEEL MINING CO., INC.,  
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 83-124-R  
Citation No. 2001887; 3/4/83

Gary No. 50 Mine

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

v.

U.S. STEEL MINING CO., INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 83-219  
A.C. No. 46-01816-03519

Gary No. 50 Mine

UNITED MINE WORKERS OF  
AMERICA,  
INTERVENOR

DECISION

Appearances: Louise Q. Symons, Esq., U.S. Steel Mining Co.,  
Inc., Pittsburgh, Pennsylvania for Contestant/  
Respondent;  
James B. Crawford, Esq., Office of the Solicitor  
U.S. Department of Labor, Arlington, Virginia,  
for Respondent/Petitioner;  
Mary Lu Jordan, Esq., United Mine Workers of  
America, for Intervenor.

Before: Judge Kennedy

The captioned review-penalty proceedings came on for an evidentiary hearing in Pittsburgh, Pennsylvania on March 15, 1984. The gravamen of the charge was the operator's refusal to pay a union walkaround for time spent participating in a "Ventilation Technical Inspection" in violation of section 103(f) of the Mine Safety Law. The operator challenged the validity of the citation and the penalty assessed on the ground the activity was not an "enforcement inspection" within the meaning of section 103(a).

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During the course of his opening statement, the solicitor admitted MSHA gave advance notice of the "inspection" whereupon the operator moved to vacate and dismiss. In support of her argument counsel for the operator pointed out that section 103(a) prohibits advance notice of any enforcement inspection and section 110(e) makes it a misdemeanor punishable by a fine of up to \$1,000 and imprisonment for up to six months for any person to give advance notice of such an inspection.

The solicitor opposed the motion stating "there is advance notice of all inspections" and more particularly of the four quarterly inspections mandated by section 103(a) of the Act. The solicitor declared there has never been a prosecution for violating the advance notice prohibition and expressed confidence that the department would take no adverse action against an inspector for doing so. (FOOTNOTE 1)

Despite the solicitor's zeal to compel testimony that might violate the inspector's Fifth Amendment rights, the trial judge refused to allow the inspector to testify unless given appropriate use immunity. (FOOTNOTE 2) 18 U.S.C. 6002. Under the Omnibus Federal Immunity Statute, only the Attorney General or his duly authorized representative may approve issuance of an immunity order by administrative agencies of the United States. 18 U.S.C. 6001, 6002, 6004. Unfortunately, the Federal Mine Safety and Health Review Commission is not an agency authorized to issue an immunity order.

