

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

2 SKYLINE, 10th FLOOR

5203 LEESBURG PIKE

FALLS CHURCH, VIRGINIA 22041

SEP 27 1984

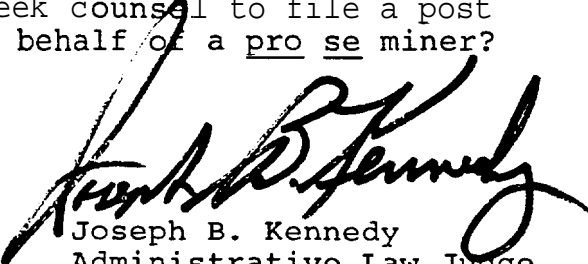
JEFFREY L. FANKHAUSER, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. LAKE 84-87-D
: :
GEX HARDY, INC., : MSHA Case No. VINC CD 84-06
Respondent :
: Holmes Strip Mine

ORDER OF REFERENCE

As the Commission is undoubtedly aware, a large percentage of the discrimination cases presently being filed are by miners acting pro se without legal representation of any kind.

Inasmuch as the Commission has never addressed the role of the trial judge in a discrimination proceeding where the miner is without legal representation, it is ORDERED that the captioned matter be, and hereby is, REFERRED to the Commission for its consideration and issuance of an order delienating the proper role of the trial judge in trying a pro se discrimination case. For example:

1. Is it the responsibility of the trial judge to require such discovery on behalf of the pro se miner as he deems necessary to a full and true disclosure of the facts?
2. Is it the responsibility of the trial judge to conduct the direct and cross-examination of witnesses where the miner is unable or incapable of doing so?
3. After trial, is it the responsibility of the trial judge to seek counsel to file a post hearing brief on behalf of a pro se miner?


Joseph B. Kennedy
Administrative Law Judge

Distribution:

Mr. Jeffrey L. Fankhauser, Box 23, Dundee, OH 44624
(Certified Mail)

Wm. Michael Hanna, Esq., Squire, Sanders & Dampsey, Counselors
at Law, 1800 Huntington Building, Cleveland, OH 44145
(Certified Mail)

/ejp

2297