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SOL (MSHA) V. MICHIGAN SILICA
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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),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. LAKE 85-67-M
A.C. No. 20-00608-05511

v.

MICHIGAN SILICA COMPANY,
FORMERLY KNOWN AS
OTTAWA SILICA COMPANY,
RESPONDENT

Michigan Silica Company

DECISION APPROVING SETTLEMENT

Before: Judge Koutras

Statement of the Case

This proceeding concerns a civil penalty proposal filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment in the amount of \$500 for a violation of section 105(c)(1) of the Act. The respondent contested the alleged violation and proposed civil penalty, and the case was docketed for a hearing on the merits. However, the parties have now submitted a proposed settlement pursuant to 29 C.F.R. 2700.30, and the respondent has agreed to pay \$250 for the violation in question.

The violation in this case is the result of a discrimination complaint filed by MSHA against the respondent in 1981. My decision upholding the complaint was issued on June 3, 1982, 4 FMSHRC 1013, and on appeal it was affirmed by the Commission at 6 FMSHRC 516 (March 1984). On November 11, 1985, the U.S. Court of Appeals for the Sixth Circuit affirmed the Commission's decision that the respondent violated section 105(c)(1) of the Act, Secretary of Labor v. Michigan Silica Company, Formerly Known as Ottawa Silica Company, Case No. 84-3859, 6th Cir. (1985).

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The parties state that they have discussed the agreed upon settlement, and I have reviewed the pleadings and am familiar with all of the facts and circumstances since I presided at the discrimination hearing and adjudicated the merits of that case. In support of the reduction of the proposed civil penalty in this case, the parties assert that they wish to settle the matter in order to avoid the additional expense of litigation. I note that the respondent has already incurred great expenses in the litigation of the case and has paid in excess of \$40,000 for back wages and other benefits to the employee who was ordered reinstated to his job.

After careful and further consideration of this matter, I conclude and find that the proposed settlement is reasonable and in the public interest. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlement IS APPROVED, and the petitioner's motion seeking my approval IS GRANTED.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$250 for the violation in question. Payment is to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of payment, this matter is dismissed. The hearing scheduled for April 10, 1986, is cancelled.

George A. Koutras
Administrative Law Judge