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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
ON BEHALF OF
GEORGE S. JOHNSON,
LOUIS JOHNSON, JR.,
ARNOLD J. RASBERRY,
BOOKER T. WARE, JR.,
COMPLAINANTS

DISCRIMINATION PROCEEDING

Docket No. SE 86-108-D
BARB CD 86-31

No. 3 Mine

v.

JIM WALTER RESOURCES, INC.,
RESPONDENT

ORDER OF DISMISSAL

Before: Judge Maurer

The Stay Order dated December 5, 1986, as modified on August 7, 1987, is hereby lifted.

The pleaded facts involved in this case are essentially the same as those in Secretary of Labor, ex. rel. Beavers, et al. and UMWA v. Kitt Energy Corporation, 10 FMSHRC 861 (July 15, 1988). Therein, the Commission reversed my decision below and found that this set of facts did not violate section 105(c) of the Mine Act, 30 U.S.C. 815(c). The Secretary has not taken an appeal from that decision.

The parties to this proceeding agree and I concur that on the facts of this case, its outcome is controlled by Kitt Energy Corporation, supra.

Accordingly, respondent's letter-motion of July 22, 1988, to dismiss this case is granted and this proceeding is dismissed in accord with controlling Commission precedent.

Roy J. Maurer
Administrative Law Judge