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SOL (MSHA) & P. STANFIELD V. NATIONAL MINES CORP.
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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
PATRICK STANFIELD,
COMPLAINANT

DISCRIMINATION PROCEEDING

Docket No. KENT 88-171-D
MSHA Case No. BARB CD 88-25
MSHA Case No. BARB CD 88-28

v.

Stinson No. 7 Mine

NATIONAL MINES CORPORATION,
RESPONDENT

ORDER

Statement of the Case

This is a discrimination proceeding filed by the Secretary against the respondent pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 815(c)(2). On July 25, 1988, the complaining miner, Patrick Stanfield, by and through his private counsel, Tony Oppeward, Appalachian Research & Defense Fund of Kentucky, Inc., Hazard, Kentucky, filed a Notice of Intervention as a party in this case pursuant to Commission Rule 4(b), 29 C.F.R. 2700.4(b), and requested that he be served with all pleadings, notices, and other papers filed in this matter. The cited rule provides as follows:

2700.4 Parties

* * * * *

(b) Procedure for miners and their representatives to become parties--(1) Generally. Affected miners or their representatives may intervene before hearing by filing a written notice with the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, N.W., Sixth Floor, Washington, D.C. 20006. The Executive Director shall forthwith mail a copy of the notice to all parties. Affected miners or their representatives may intervene after the start of the hearing upon just terms and for good cause shown.

(2) Special procedure for discrimination proceedings. In a proceeding instituted by the Secretary under 2700.40, the complaining miner, applicant for employment or representative of miners may intervene and present additional evidence on his own behalf.

On July 29, 1988, the Secretary filed an objection to Mr. Stanfield's intervention as a party, and stated that while she does not object to Mr. Stanfield's intervention as provided for by section 105(c)(2) of the Act, and Commission Rule 4(b)(2), 29 C.F.R. 2700.4(b)(2), she does object to the designation of party status for Mr. Stanfield, and to his participation in this case beyond that which is specifically set out in the cited statutory section and Commission procedural rule.

Section 105(c)(2) of the Act states as follows:

The complaining miner, applicant, or representative of miners may present additional evidence on his own behalf during any hearing held pursuant to this paragraph.

Commission Rule 4(b)(2), 29 C.F.R. 2700.4(b)(2), provides as follows:

Special Procedure for Discrimination Proceedings: In a proceeding instituted by the Secretary under 2700.40, the complaining miner, applicant for employment or representative of miners may intervene and present additional evidence on his own behalf.

On August 1, 1988, Mr. Oppegard filed a response to the Secretary's objection, and asserted that contrary to the position taken by the Secretary, Commission Rule 4(a), 29 C.F.R. 2700.4(a), provides party status for an affected miner such as Mr. Stanfield upon intervention. The cited rule provides in relevant part as follows:

(a) Party status. Persons, including the Secretary and operators, who are named as parties or permitted to intervene, are parties. A miner . . . who has filed a complaint with the Secretary or Commission under sections 105(c) or 111 of the Act . . . and an affected miner . . . who has become a party in accordance with paragraph (b) of this section, are parties. (Emphasis added).

Discussion

Although given an opportunity to respond to the party status issue raised by the Secretary and Mr. Stanfield's counsel, the respondent has taken no position on this question. The Secretary's position is that while Mr. Stanfield may intervene in this matter, his participation is limited to the presentation of additional evidence at the hearing on his own behalf.

In a further response received from Mr. Oppegard on August 23, 1988, clarifying his position, he points out that pursuant to the Commission rules, an affected miner such as Mr. Stanfield, may intervene before hearing as a matter of right, and need not move the Court for permission to intervene, as required by parties other than affected miners. Mr. Oppegard seeks an opportunity for a more expansive role by Mr. Stanfield in the pursuit of his discrimination claim, while at the same time recognizing the fact that the Secretary is chiefly responsible for the prosecution of this proceeding.

Mr. Oppegard takes the position that when Congress and the Commission determined that miners are allowed to intervene and to "present additional evidence on their own behalf," they did not intend to deny miners the tools to protect their interests, nor did they intend to deny them dues process. Mr. Oppegard points out that party status is critical to Mr. Stanfield because pursuant to the Commission's procedural rules, parties have the right to obtain discovery, to take depositions, to serve interrogatories and requests for production of documents, to subpoena witnesses, and to submit rebuttal evidence and to cross-examine witnesses at the hearing. By limiting Mr. Stanfield's participation to the presentation of additional evidence on his own behalf during any hearing, Mr. Oppegard suggests that Mr. Stanfield's participation will be less than meaningful, and would deny him the full participatory rights afforded other parties in proceedings of this kind. Without these rights, Mr. Oppegard believes that Mr. Stanfield's participation as an intervenor "would be hollow indeed."

CONCLUSION AND ORDER

After careful consideration of the arguments presented by the parties, I conclude and find that Mr. Oppegard's position is correct. Since Mr. Stanfield has intervened in this matter pursuant to Commission Rule 4(b), it seems clear to me that he should be accorded party status pursuant to Commission Rule 4(a), and IT IS SO ORDERED.

George A. Koutras
Administrative Law Judge