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LOCAL 1769, DISTRICT 22, UMWA V. UTAH POWER & LIGHT
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

LOCAL 1769, DISTRICT 22, UNITED MINE WORKERS OF AMERICA (UMWA), COMPLAINANT	COMPENSATION PROCEEDING
	Docket No. WEST 87-86-C
	Deer Creek Mine
v.	
UTAH POWER & LIGHT COMPANY, MINING DIVISION, RESPONDENT	

ORDER OF DISMISSAL

Before: Judge Morris

The United Mine Workers of America, (UMWA), complainant herein, filed a complaint against Utah Power & Light Company, (UP&L), seeking compensation on behalf of certain members of Local Union 1769 by virtue of Section 111(FOOTNOTE 1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., (the "Act").

Issues

The issues are whether the settlement agreement entered into between the parties should be enforced. If so, UP&L's motion to dismiss the complaint should be granted.

On the other hand, if UP&L's motion to dismiss is denied, and the case goes to a hearing should the miners be required to refund the monies UP&L paid under the terms of the settlement agreement?

Evaluation of the Issues

After the UMWA filed its complaint herein discovery followed and in due course the parties submitted a settlement agreement to the judge.(FOOTNOTE 2) In accordance with the settlement agreement UP&L paid in excess of $25,000 to various miners at the Deer Creek Mine.

The settlement agreement included compensation for 147 miners. However, the UMWA now seeks to abrogate the agreement and it claims that 14(FOOTNOTE 3) miners were not included in the settlement.

Remedies Sought

UP&L requests that the settlement agreement be enforced. It argues it paid the amount due under the agreement. Accordingly, the complaint should be dismissed.

If the complaint is not dismissed, then UP&L contends that before the settlement agreement can be rescinded the miners must

refund to UP&L the amounts paid by virtue of the settlement with interest.

On the other hand, the UMWA argues that granting UP&L's motion to dismiss would result in the enforcement of a settlement agreement that would erroneously exclude fifteen miners.

The UMWA states that some of the issues to be considered at an evidentiary hearing are whether the parties reached an agreement and whether the document as filed reflects that agreement and, if not, what is the appropriate remedy in the case.

The UMWA opposes UP&L's position that if the settlement agreement is rescinded the miners must repay UP&L. In short, the UMWA asks that the settlement agreement be reformed to reflect the actual agreement reached by the parties. The UMWA claims the actual agreement was for UP&L to pay all idled miners 50 percent of their lost wages.

If the UMWA's position is denied then the UMWA suggests the fifteen miners who were excluded from the settlement be allowed to continue to prosecute their Section 111 claims.

Affidavits

The affidavits of the representatives of the parties, the settlement agreement and certain uncontroverted evidence on file herein are depositive of the issues. The affidavits read as follows:

AFFIDAVIT OF JOYCE A. HANULA(FOOTNOTE 4)

Upon pain of prejury, I state the following:

> I, Joyce A. Hanula, am a paralegal at the United Mine Workers of America's (UMWA) Legal Department located at 900 15th Street, NW, Washington, DC 20005. I have been employed as a paralegal for the UMWA for approximately 13 years.
>
> 1. In the course of my duties, I regularly investigate cases and prepare pleadings in matters arising under the Federal Mine Safety and Health Act (the Act). On several occasions I have filed cases under section 111 of the Act and have either litigated such cases or reached settlement agreements.

2. I prepared the UMWA's Complaint for Compensation filed on January 27, 1987, in the above-captioned case. I also prepared the UMWA's First Set of Interrogatories to Utah Power & Light (UP&L) filed on February 11, 1987.

3. Interrogatories 5a-c and 6a-c concerned the identity of miners scheduled to work from November 3 to 10, 1986, the identity of miners who reported unavailable to work during this period and the hourly or daily rate of pay of each miner. UP&L responded to these Interrogatories with lists identified as Exhibits A, B, and C. (See attached exhibits marked Exhibit A through C).

4. Upon receipt of UP&L's answers to the Union's interrogatories, I called Tim Means, counsel for UP&L and informed him that the photocopy of Exhibit A attached to UP&L's answers was not legible. Mr. Means informed me that his copy of Exhibit A was in the same condition and that he would contact UP&L and attempt to get a clearer copy. I never did receive another copy of Exhibit A. Mr. Means then referred me to Exhibit C and stated that it was the best list to look at since it had the miners' names and hourly rates of pay.

5. UP&L's Exhibit B is a work schedule for November 5, 6, 7, and 10, 1986, but does not cover November 3 and 4.

6. UP&L's Exhibit C is a payroll record covering the period from November 3 to 10, 1986, which is the period of time covered by the withdrawal order which gave rise to this case.

7. On September 28, 1988, on the basis of the payroll record, I sent John Scott, counsel for UP&L a list of the names of miners employed at the Deer creek Mine in November 1986 and their daily rates of pay. I informed Mr. Scott that "I cannot determine from the information obtained from you through discovery what shift each miner was scheduled to work . . . and to provide this information to me as soon as possible in order to calculate the amount of entitlement for miner." (See cover letter attached as Exhibit D and list identified as Exhibit E).

8. On September 29, 1988, Mr. Scott returned the list and marked beside each miner's name the initial G (for graveyard shift), D (for day shift), and A (for afternoon shift), which represented what shift each individual worked. A note was also attached from Mr. Scott requesting that I call

him upon receipt of the list. (See attached Exhibit E).(FOOTNOTE 5) I called Mr. Scott and we discussed the list and I informed him that the names were taken off of the payroll list and he agreed that the payroll list was the best list from which to extract the names of each of the idled miners as well as their hourly rates of pay. Mr. Scott also indicated that he was not certain of what shifts some individuals worked and he would check with the company and let me know.

9. A few days later Mr. Scott suggested that UP&L might offer to settle the case by compensating only the miners who would have been scheduled to work in the specific area described in the Order: the 3rd South belt entry and adjacent areas. Mr. Scott said that this was only a suggestion and not an offer. On October 6, 1988, I transmitted this information to Robert Jennings, UMWA Health & Safety Representative in Utah, along with Exhibit E which I had previously submitted to Mr. Scott. Mr. Jennings forwarded the same to George Baker, President of Local Union 1769. (See Exhibit F attached).

10. On November 9, 1988, in preparation for the December 15, 1988, hearing date, I sent Mr. Jennings a list of the names of miners who I believed were entitled to compensation should the Union prevail in the case. The list included the miners' daily rate of pay, the number of days each miner was idled and the amount of compensation due each miner. I also sent Mr. Jennings a photocopy of Exhibit C. (See Exhibit G and attached list).(FOOTNOTE 6)

11. Mr. Scott and I continued to discuss the list of miners I had sent him in September and he advised me that certain miners on my list would not be entitled to compensation, even if the Union prevailed in its claim. He supported his contention by directing me to UP&L's payroll list (attached as Exhibit C) and showing me that certain miners had been fully compensated during the period of time for which the Union was claiming compensation. That is how the list

attached to the Settlement Agreement (entitled Members of Local Union 1769 Who Are Not Entitled to Compensation) was arrived at. (See Exhibit H). Both parties looked at the payroll list and determined who actually worked and who didn't during the period in question.

12. On November 18, 1988, Mr. Scott and Ms. Chetlin came to the UMWA headquarters to meet with Mary Lu Jordan and myself, to discuss the case. Mr. Scott and Ms. Chetlin had a map of the mine and explained the belt system of the Deer Creek Mine and which areas of the mine UP&L believed were affected by the withdrawal order. Mr. Scott then proposed a settlement offer of compensating each idled miner one shift of pay, which he said amounted to approximately $20,000. I responded by saying that the offer would not be equitable because there were some miners who were idled for the week whereas others only lost a shift or two of pay and that it might create problems if we paid everyone one shift. However, I told Mr. Scott that I would present the offer to the Local Union.

13. After the meeting with Scott and Chetlin, I called Messrs. Jennings and Baker and informed them of UP&L's offer. With the company's permission, the Local held a meeting, between shifts, at the bathhouse to discuss the case. It was the consensus of the Local to reject UP&L's offer and go for everything. Mr. Baker advised me of the Local's decision. Messrs. Baker and Jennings and I discussed a counter proposal. What we came up with was a counteroffer of paying each miner who was idled during the week of November 3-10, 1986, one-half of what they would get if they prevailed in the case, i.e., if a miner was idled four days he would get paid for two days.

14. On December 5, 1988, I sent Mr. Scott a letter outlining the Union's counter proposal and attaching a list of what I believed to be the names of the miners who would be entitled to compensation if the Union prevailed. (See Exhibit I). This list incorporated corrections that Mr. Scott and I had discussed after he had received the earlier list (Exhibit E) and compared it to the payroll list. Exhibit I therefore had deleted certain people who had not lost any wages and adjusted amounts of pay for others. Mr. Scott called me and we reviewed Exhibit I while we were on the phone, by again comparing it to the payroll record. On the basis of the payroll record he again pointed out that certain individuals should be removed, and certain information regarding rates of pay, period of idlement, and amount due should be adjusted. I noted the requested changes and, after referring to the payroll record, confirmed my agreement while we were on the phone. (See handwritten changes to Exhibit I).

15. On December 8, 1988, Mr. Scott hand-delivered a letter confirming UP&L's acceptance of the Union's counter proposal. (Exhibit H). I signed the agreement believing that all miners affected by the order were listed.

16. In late December 1988, I received a call from George Baker, President of Local Union 1769, informing me that there were four miners who were not on the list (Exhibit H) but who were entitled to compensation. I called Mr. Scott and informed him of this matter and he said "okay we will pay these four miners but no more." Simultaneously, George Baker approached Dave Lauriski, management personnel at UP&L, and told him four people had been omitted from the list. Mr. Lauriski told Mr. Baker that he would pay them provided he didn't come up with any other names. Mr. Baker informed Mr. Lauriski that he would not agree to sign anything because more names could have been left off the list. Later in the week, Mr. Baker discovered that 10 more names had been omitted and again approached Mr. Lauriski. Mr. Lauriski informed Mr. Baker that he would not pay any of them.

17. On January 10, 1989. I informed Mr. Scott of the omission of the 14 miners and requested that these miners be paid.(FOOTNOTE 7) These miners had been mistakenly omitted from Exhibit H because I had relied on the payroll list (Exhibit C) to compile the list of claimants. I had no reason to believe the payroll list (Exhibit C) would not provide me with all the names of people who would have been scheduled to work during the week in question. The list is not limited to people who received payment that week, it also contains the names of individuals who received no payment and were therefore idled for the week. Moreover, in our discussions Mr. Scott and I referred to the payroll list to verify whether an individual should be removed as a claimant, or to determine how much a particular individual was owed. In these discussions, Mr. Scott never mentioned nor referred me to Exhibits A or B.

18. When I signed Exhibit H it was my understanding that all the miners who had been idled during the time the closure order was in effect would be compensated for one

half of the lost wages claimed. I believed UP&L was operating under the same assumption when we signed the agreement.

AFFIDAVIT OF JOHN T. SCOTT, III

JOHN T. SCOTT, III, having been duly sown, deposes and says:

1. I am a member of the law firm of Crowell & Moring where I have practiced law since 1979.

2. As of June 28, 1988, I became the lawyer at Crowell & Moring responsible for handling the above-captioned case.

3. During the course of settlement negotiations, the United Mine Workers of America ("UMWA") was to compile a list of miner complainants.

4. I told Joyce Hanula of the UMWA that, in calculating the amount of each miner's claim, the payroll list (Exhibit C to Attachment 1 to UP&L's Brief) could be used to show which miners had already been paid and the miners' rates of pay.

5. Once the UMWA had complied its list, I used the payroll list to verify that miners identified by the UMWA had not already been paid in the normal course.

6. Aside from the statement described in Paragraph 4, supra, I made no further representations to anyone at the UMWA about how the data furnished in UP&L's interrogatory answers (Attachment 1 to UP&L's Brief) should be evaluated, what the lists of names attached to those interrogatory answers (Exhibits A, B and C to Attachment 1 to UPL's Brief) represented, the interrelationship of the three lists, or whether the UMWA should rely on any one list as a basis for identifying claimants.

Further affiant sayeth naught.

AFFIDAVIT OF THOMAS C. MEANS

THOMAS C. MEANS, having been duly sworn, deposes and says:

1. I am a member of the law firm of Crowell & Moring where I have practiced law since 1978.

2. From the time this compensation claim was filed until June 28, 1988, I was the lawyer at Crowell & Moring responsible for handling the above-captioned case.

3. On March 23, 1987, I served on Joyce Hanula of the United Mine Workers of America a copy of Respondent's Answers to Complainants' First Set of Interrogatories.

4. I have reviewed Attachment 1 to UP&L's Brief in Support of Motion to Dismiss. With the exception of the red circles around certain names, which have been subsequently added to illustrate the points made in the UP&L Brief, which this affidavit accompanies, Attachment 1 is a true and correct copy of the interrogatory responses which I served on Ms. Hanula on March 23, 1987.

5. Attachment 1 contains three separate lists of miners which were supplied to the UMWA in response to specific interrogatories. Beyond the terms of the interrogatory answers, I made no further representations to anyone at the UMWA about how the date should be evaluated, what these lists represented, the interrelationship of these lists, or whether the UMWA should rely on any one list as a basis for identifying claimants or otherwise.

6. During the Spring of 1987, in a telephone conversation, I requested Ms. Hanula to identify for me the miners whom she claimed were entitled to compensation in order to evaluate the claim for settlement purposes. She advised me that she would have to consult with the Local and get back to me, but she never did.

Further affiant sayeth naught.

SETTLEMENT AGREEMENT

The settlement agreement is in the form of a letter from Mr. John T. Scott, III, counsel for UP&L to Ms. Joyce Hanula, representative of the UMWA. The letter, dated December 8, 1988, was signed the same date by Ms. Hanula. The letter agreement (filed with the Commission on December 15, 1988) reads as follows:

Dear Joyce:

This letter sets forth the terms of the agreement between the United Mine Workers of America ("UMWA") on behalf of Local Union 1769 and Utah Power & Light Company, Mining Division ("UP&L") to settle and terminate this compensation proceeding.

1. Attached as Exhibit A is a list of all claimants in this proceeding. UP&L shall pay to each listed claimant the amount of compensation specified for that claimant.

2. UP&L shall endeavor to make the payments to claimants by December 25, 1988, and in any event shall do so by December 31, 1988. UP&L shall deduct from the amount paid to each claimant the amount UP&L is required by local, state or federal law and any collective bargaining agreement to withhold from such payment.

3. Payments to the claimants shall terminate any obligations of UP&L, and the UMWA shall, after receiving notice from UP&L that payments have been made, immediately file a motion with the Commission to withdraw its complaint.

4. This agreement is entered into for purposes of settlement, in order to permit the parties to conserve resources and to avoid the expense of protracted litigation. UP&L's agreement to make the specified payments does not constitute any admission of liability to the UMWA or to any claimant under Section 111 of the Federal Mine Safety and Health Act of 1977.

If you accept these terms, please sign this letter below and return it to me. I will then communicate the settlement to ALJ Morris, and advise UP&L to make the necessary arrangements to see the miners are paid.

Sincerely,

//s// John T. Scott, III

Agreed: /s/ Joyce A. Hanula
Date: 12/8/88

Attached to the letter is a seven page list containing the names of 147 miners who are identified by name. Further, a daily rate is shown for each miner as well as the days idled (ranging from 1 to 5 days). A further column shows the amount due each miner.

Jurisdiction

The undersigned judge has jurisdiction to consider the issues presented herein by virtue of Sections 111 and 113(d)(1) of the Act, 30 U.S.C. 821, 823(d)(1).

Discussion

Pending herein is UP&L's motion for the judge to reconsider his ruling denying UP&L's motion to dismiss the compensation complaint.

The Commission has recently restated its view that the oversight of proposed settlements is an important aspect of the Commission's adjudicate responsibilities under the Mine Act, and such discretion is, in general, committed to the Commission's

sound discretion. Secretary of Labor, Mine Safety and Health Administration (MSHA) and United Mine Workers of America v. Birchfield Mining Company, WEVA 87-272, August 21, 1989 slip. op, at 3.

It is apparent in this case that the dispute between the parties arose after a settlement agreement had been executed and after UP&L had paid the miners in accordance with the terms of the agreement.

The UMWA argues that the parties intended that all claimants would receive 50 cents on the dollar in settlement of the case. In support of its position the UMWA relies on the affidavit of Ms. Hanula and supporting exhibits.

Contrary to the UMWA's views UP&L expressly denied that any miner was entitled to any compensation under Section 111 (Pleadings filed in the case and paragraph 4 of settlement agreement).

According to the UMWA: the Union and UP&L realized that there would be a factual dispute in this case as to the area of the mine that was idled as a result of the order. The Union maintained that the order had the effect of idling the entire mine, while UP&L contended that any idlement under Section 111 was limited only to the area described in the order.

UP&L's initial approach to settling the case was to offer to pay only those miners who had been assigned to work in the area described in the Order. (Hanula affidavit at para. 9). Upon further discussion between the parties, however, and consideration of the payroll records, UP&L and the Union realized that under that approach, the people who had lost little or no wages as a result of the order would be the only ones to receive payment.

Upon realization of that fact, the settlement discussions shifted toward the possibility of providing some payment to all the idled miners, no matter which area of the mine they had been assigned. UP&L proposed paying all the affected miners one shift of pay, which UP&L calculated would amount to approximately $20,000. (Hanula affidavit para. 9). The Union rejected that proposal and pointed out that paying everybody one shift would mean that some miners would be made almost completely whole, while some miners would receive only a small portion of the amount of wages they had lost. The Union proposed instead that everyone receive 50¢ on the dollar. (Hanula affidavit at para. 13 and 14). This was agreed to by UP&L. Unfortunately, when the parties reduced their agreement to writing they did not include 14 (or 15) of the miners who would have been scheduled to work

during the period in question, but who did not work, and were therefore entitled to a settlement. The UMWA asserts the omission of the miners was due to a mutual mistake in the compilation of the list of claimants.

The UMWA argues: because the parties reached an agreement that all the idled miners would be paid 50 cents on the dollar, but failed to express it properly in the written document, the appropriate remedy is for the Commission to reform the document to express the agreement of the parties.

In support of its position the UMWA relies on Restatement, Second, Contracts 155, 157, 158, National Presto Industries, Inc., v. United States, 338 F.2d 99 (U.S. Court of Claims 1964, cert. denied 380 U.S. 962 (1965).

I reject the UMWA's position. The cases relied on by the UMWA generally involve contract cases. However, a more specific body of law addresses settlement agreements. Such agreements can only be rescinded if they are based on mutual mistake, Callen v. Pennsylvania R.R., 332 U.S. 625, 630 (1948).

In this case there was no mutual mistake. If a mistake occurred it was unilateral on the part of Local 1769 or the UMWA. A unilateral mistake forms no basis for a rescission. Mid-South Towing Co. v. Har-Win, Inc., 733 F.2d 386 (5th Cir. 1984); Cheyenne-Arapaho Tribes of Indians v. United States, 671 F.2d 1305, (Ct. Cl 1982); In Re Sand N'Surf, Inc., 13 B.R. 384 (E.D. Pa. 1981).

Further, there can be no mutual mistake as to the number of miners entitled to compensation because on this issue the parties compromised.

It has been noted by Corbin in Contracts as follows:

> [W]here the parties are consciously disputing an issue and agree upon a compromise in order to settle it, they are making no mistake as to the matter at issue and thus settled. There must be a mistake as to matters that were not at issue and were not compromised in order that the settlement may be avoidable on the grounds of mistake, 6 Corbin, Contracts 1292 (1963)

Finally, compromise means that both sides make concessions to arrive at an enforceable agreement "without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle. Swift Chemical Co. v. Usamex Fertilizers, Inc., 490 F. Supp. 1343, 1355-56 (E.D. La. 1980).

The UMWA has requested that the judge hold a hearing and order that the 14 excluded miners be compensated.

Even if a misrepresentation or mutual mistake occurred then the remedy is to rescind the settlement agreement, not rewrite it. This is because the agreement is in effect nullified. See Midwest Petroleum Co., v. United States Department, 760 F.2d 287 (Temp Emer. Ct. App. 1985); Saunders v. General Services Corp., 659 F.Supp 1042 (E.D. VA. 1986).

Since UP&L has already performed its side of the agreement it necessarily follows that the monies it paid out would have to be returned with interest. Litigation could then be resumed over whether any miner is entitled to compensation. In short, the judge cannot declare the 14 (or 15) miners must be paid without imposing an entirely new and different settlement agreement on UP&L. In sum, the miners of Local 1769 cannot retain the fruits of the settlement agreement and at the same time seek additional compensation.

The UMWA also asserts that the scope of the hearing should also address the issues of why UP&L failed during discovery to disclose the names of 14 (or 15) miners excluded from the answers to interrogatories.

A strident dispute has arisen over this issue. UP&L vigorously asserts it properly answered the interrogatories and it demonstrates the veracity of its position by circling the names of said miners in its answers to interrogatories.

The judge declines to convene a hearing for an irrelevant issue. Even if the judge assumes UP&L did not disclose the names of all miners it is nevertheless apparent that the UMWA did not rely on UP&L's answers to interrogatories. Specifically, in its proper representation of Local 1769 it asked the local union "regarding any changes, additions, etc. on the list" (See UMWA letter and attached list of November 9, 1988 attached to this order; same as Exhibit G in Hanula affidavit).

Prior thereto, on October 6, 1988 the UMWA also requested Local 1769 to verify the names of miners who worked in the 3rd south belt entry and adjacent areas on the date in question. (See letter of October 6, 1988 attached to this order; same as Exhibit F in Hanula affidavit).

Subsequently the UMWA also submitted to UP&L its list of the individuals entitled to compensation (See letter of September 28, 1988 attached to this order; same as Exhibit D in Hanula affidavit).

The law is clear and no citation of authorities is necessary to establish that the courts favor compromise of disputed claims. This case was settled when Ms. Hanula signed the settlement agreement on December 8, 1988.

Sanctions

UP&L asserts(FOOTNOTE 8) that the UMWA's conduct violates Commission Rule 6, 29 C.F.R. 2700.6. Accordingly, UP&L seeks an award of expenses and attorneys fees in defending UMWA's baseless effort to abrogate the settlement agreement.

UP&L's motion to impose sanctions is denied. See Rushton Mining Company, 11 FMSHRC 759 (May 1989).

For the reasons stated herein the following order is appropriate:

ORDER

1. Respondent's motion to reconsider the order of May 12, 1989 (denying respondent's motion to dismiss the complaint) is granted.

2. Upon reconsideration and for the reasons stated herein respondent's motion to dismiss is granted.

3. The complaint for compensation herein is dismissed.

John J. Morris
Administrative Law Judge

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FOOTNOTES START HERE
~FOOTNOTE_ONE

1. "Sec. 111. If a coal or other mine or area of such mine is closed by an order issued under section 103, section 104, or section 107, all miners working during the shift when such order was issued who are idled by such order shall be entitled, regardless of the result of any review of such order, to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than the balance of such shift. If such order is not terminated prior to the next working shift, all miners on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift. If a coal or other mine or area of such mine is closed by an order issued under section 104 or section 107 of this title for a failure of the operator to comply with any mandatory health or safety standards, all miners who are idled due to such order shall be fully compensated after all interested parties are given an opportunity for a public hearing, which shall be expedited in such cases, and after such order is final, by the operator for lost time at their regular rates of pay for such time as the miners are idled by such closing, or for one week, whichever is the lesser. Whenever an operator violates or fails or refuses to comply with any order issued under section 103, section 104, or section 107 of this Act, all miners employed at the affected mine who would have been withdrawn from, or prevented from entering, such mine or area thereof as a result of such order shall be entitled to full compensation by the operator at their regular rates of pay, in

addition to pay received for work performed after such order was issued, for the period beginning when such order was issued and ending when such order is complied with, vacated, or terminated. The Commission shall have authority to order compensation due under this section upon the filing of a complaint by a miner or his representative and after opportunity for hearing subject to section 554 of title 5, United States Code.

~FOOTNOTE_TWO
2. The extended procedural history of this case is attached to this order of dismissal.

~FOOTNOTE_THREE
3. The file indicates possibly 15 miners may have been involved. (See Hanula affidavit paragraphs 16, 17).

~FOOTNOTE_FOUR
4. This affidavit was filed and amended by letter on April 24, 1989.

~FOOTNOTE_FIVE
5. The affidavit footnote reads:

Exhibit E as sent to Mr. Scott included only the names of the employees and their hourly rates of pay. The handwritten information regarding daily rates of pay, number of days idled and amount due each claimant was added after Mr. Scott indicated what shift each miner worked.

~FOOTNOTE_SIX
6. The affidavit footnote reads:

The attachment to Exhibit G as sent to Mr. Jennings did not include my handwritten figures.

~FOOTNOTE_SEVEN
7. The affidavit footnote reads:

Since I informed Mr. Scott that 14 miners were omitted from the list, another miner informed Mr. Baker that his name was omitted from the Settlement Agreement. Therefore the total number of miners omitted from the payroll list is 15 not 14. The reason why Mr. Scott was not informed earlier of the omissions is that the UMWA headquarters were closed for the Christmas holidays from December 26, 1988 to January 2, 1989.

~FOOTNOTE_EIGHT
8. The request is contained in Footnote 6 of UP&L's brief filed April 11, 1989.