

CCASE:

LOCAL UNION 1769, DIST. 22, UMWA V. UTAH POWER & LIGHT

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19870129

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

LOCAL UNION 1769, DISTRICT 22, COMPENSATION PROCEEDING
UNITED MINE WORKERS OF
AMERICA (UMWA), Docket No. WEST 87-86-C
COMPLAINANT Deer Creek Mine

v.

UTAH POWER & LIGHT COMPANY,
MINING DIVISION,
RESPONDENT

Procedural History

The UMWA filed this case on behalf of Local Union 1769 on January 29, 1987.

A review of the history of these extended proceedings is necessary.

This case was filed January 29, 1987.

On February 12, 1987 the UMWA filed interrogatories directed to respondent.

On February 27, 1987, Utah Power and Light (UP&L) Company, respondent filed its answer herein.

On March 5, 1987 the case was assigned to the presiding judge.

On March 13, 1987 the case was scheduled for a hearing in Denver, Colorado for April 21, 1987.

On March 25, 1987 UP&L filed answers to the UMWA interrogatories.

On April 6, 1987 UMWA's second set of interrogatories were filed.

On April 15, 1987 the parties filed a joint motion for a continuance until such time as the judge ruled on two motions in limine (not then filed).

On April 16, 1987 the hearing set for April 21, 1987 was cancelled and the hearing was rescheduled for August 11, 1987.

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On May 4, 1987 UP&L filed its response to the UMWA's second set of interrogatories.

On June 18, 1987 UMWA requested the case be stayed. In support of the motion UMWA states that the issue controlling in this case was pending before the Commission in Local Union 2333 v. Ranger Fuel Corporation, Docket No. WEVA 86-439-C.

On July 20, 1987 the hearing previously scheduled for August 11, 1987 was cancelled and the case was stayed pending the issuance of the Commission decision.

On May 13, 1988, the Commission issued its decision in Ranger Fuel Corporation.

On May 25, 1988 the presiding judge forwarded a copy of the Commission decision to the parties and granted them 10 days to state whether the pending case could be disposed of without a hearing.

The parties advised the judge they needed additional time; they were granted an additional 10 days (Order, June 9, 1988).

On June 14, 1988 the parties sought an indefinite stay until the parties reach an agreement regarding entitlement.

On June 17, 1988 the judge denied the request for an indefinite stay and directed the parties to advise the judge of a convenient location for the hearing.

On June 28, 1988 UP&L requested a hearing in Price, Utah.

On July 29, 1988 UP&L moved for a summary decision. On the same date the judge granted UMWA 15 days to reply to UP&L's motion.

On August 5, 1988 the UMWA responded to UP&L's motion.

On August 22, 1988 UP&L filed its reply.

On September 20, 1988 the parties moved for a continuance (from October 13, 1988 to October 27, 1988).

On October 3, 1988 complainant moved for leave to file a motion for summary decision.

On October 4, 1988 the judge denied the UMWA's motion for leave to file for a summary decision.

On October 5, 1988 the judge rescheduled the location of the hearing on December 15, 1988 from Denver, Colorado to Salt Lake City, Utah.

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On November 29, 1988 the parties requested that the hearing of December 15, 1988 be rescheduled "to permit the parties to negotiate over a specific settlement proposal currently under consideration" (UP&L's letter of November 29, 1988).

On December 6, 1988, the judge rescheduled the hearing date to March 1, 1989.

On December 8, 1988 the hearing of March 1, 1989 was cancelled as the parties had reached an "amicable settlement". Further, they were granted 15 days to file their proposed settlement agreement.

On December 12, 1988 UP&L forwarded a copy of the proposed settlement agreement. Under the agreement once UMWA received notice that the miners have been paid the UMWA would move to withdraw its complaint of discrimination.

On February 6, 1989 the judge ordered the UMWA to state whether it had received notice in accordance with the settlement agreement.

On February 23, 1989 UP&L moved to dismiss the complaint filed herein.

In support of its motion UP&L states it fully complied with the terms of the settlement agreement and paid the miners.

For its part the UMWA alleges that certain payroll records supplied by UP&L were incomplete. UP&L disagrees. Specifically, 147 miners have been paid but UMWA now asserts that an additional 14 miners should be paid.

In its response filed March 10, 1989 to UP&L's motion to dismiss the UMWA requests the Commission conduct an evidentiary hearing to determine why UP&L failed during discovery to disclose the names of miners working or scheduled to work during the idled period.

On May 12, 1989 the presiding judge denied UP&L's motion to dismiss the complaint and scheduled the case for a hearing on July 11, 1989 in Price, Utah. The judge's order further required the parties to file certain pretrial information.

Prior to the hearing UP&L filed its motion for reconsideration and clarification of the judge's order of May 12, 1989. UMWA, in its motion also requested a clarification of the judge's order.

On June 13, 1989 UMWA filed a response to the UP&L motion of May 12, 1989.

On June 13, 1989 in order that he might have sufficient time to consider the pending issues the presiding judge cancelled the hearing of July 11, 1989.

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September 28, 1988

VIA HAND DELIVERY

John T. Scott, III, Esquire
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505

Re: Local Union 1769 v. Utah Power & Light
Dear John:

I am currently attempting to gather the names of miners who are entitled to compensation in the above-captioned section 111 case. Attached is a list of the names of miners employed at the Deer Creek Mine in November, 1986, and their daily rate of pay. I cannot determine from the information obtained from you through discovery what shift each miner was scheduled to work. It would be helpful if you could provide this information to me as soon as possible in order to calculate the amount of entitlement for each miner. Once I receive this information I will send you the Union's complete list of each individual entitled to compensation and the amount due.

Sincerely,

Joyce A. Hanula

Attachment

- Exhibits D

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October 6, 1988

Mr. Robert Jennings
UMWA Health & Safety Representative
P.O. Box 783
Price, UT 84501

Re: Local Union 1769 v. UP&L

Dear Bob:

Attached is a list of the names of the miners and their hourly rate of pay who are entitled to compensation in the captioned case. Please arrange to have someone from the Local review the list for accuracy. A hearing has been scheduled on December 15, 1988, in Salt Lake City, Utah.

The 107(a) Order issued on November 3, 1986, which we are relying on in this case, idled the 3rd South belt entry from #20 crosscut including crosscuts and adjacent 1st Right entry from #34 to 3rd West number 1 drive. As you know, in our Complaint we asked for compensation for the entire mine. Yesterday, I spoke to UP&L's attorney who suggested that UP&L may offer to settle the case by compensating the miners who worked on the 3rd South belt entry and adjacent areas as described in the Order. This is not an offer from UP&L -- it is only a suggestion by their attorney. You should discuss this "possibility" with the Local and let me know what they think. In the meantime, let me know the names of the miners who worked on the 3rd South belt entry and adjacent areas on November 3, 1986. Hopefully all their names are included on the attached list.

If you have questions, call.

Very truly yours,

Joyce A. Hanula

Paralegal

Attachment

- Exhibit F

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LOCAL UNION 1769, DISTRICT 22, UMWA
v. UTAH POWER & LIGHT CO.,
DOCKET NO. WEST 87-86-C

Employee	Daily Rate	Days Idled	Amount Due
Russell Jensen	123.32	5	616.60
Reid Leamaster	120.50	4	482.00
Earl Callum	122.90	4	491.60
Bryce Brashear	122.90	2 1/2	307.25
Glen Nelson	123.70	4	494.80
Dewitt Cotner	106.99	4	427.96
Harold R. Hansen	107.45	1	107.45
Vernon Jensen	107.45	2	214.90
Gary Motte	114.74	4	344.22
B. Pat Allred	115.58	3	346.74
Randy Thayn	111.38	3	334.14
Merland Jensen	120.08	4	480.32
Larry Smith	107.45	2	214.90
Marvin Thayn	109.21	2	218.42
Kent Oviatt	112.90	3	338.70
Willas Cook	114.74	3	344.22
Thomas Rhodes	123.70	4	494.80

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P. Reeve Cook	120.08	0	0
Gerald Powell	104.81	4	419.24
Phillip Heaps	123.32	4 1/2	554.94
Dennis Spensko	114.78	3	344.34
Scott Mathis	111.38	3	334.14
Melvin Hale	123.32	3	369.96
Delmar Nilsen	123.32	3	369.96
Kirk Hansen	114.74	2 1/2	286.85
Melvin Johnson	109.21	4	436.84
Kevin Wilson	120.08	2	240.16
Gregory Powell	123.32	1	123.32
Parly C. Jones	120.92	4	483.68
William Heaps	120.92	1	120.92
Jack Jones	123.32	4	493.28
Laroy Erickson	120.92	1	120.92
Kenneth Gunter	123.32	3	369.96
George Baker	114.78	1	114.78
Sheron Housekeeper	112.38	4 1/2	505.71

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William K. Farrer	123.32	4	493.28
Robert Maki	123.32	4 1/2	554.94
Dale Christensen	117.68	1	117.68
David Johnson	120.88	0	0
Larry Brown	123.32	3	369.96
James Gunter	120.92	2 1/2	302.30
Thomas Holdaway	123.32	3	369.96
Sheldon Oviatt	120.92	3	362.76
Michael Atwood	120.92	3	362.76
Dennis Campbell	124.12	2	248.24
Don Johnson	124.12	4	496.48
Charles Westbrook	120.88	0	0
Stewart Foster	124.12	3	372.36
Patrick Sampien	120.92	4	483.68
Curtis Taylor	123.32	4	493.28
Freddy Walters	120.92	4	483.68
Michael Mortensen	117.68	0	0
Monte Tucker	117.68	0	0
William Leverton	117.68	0	0
Duron Hunter, Jr.	120.88	0	0
Victor Zavala	120.92	3	362.64
Lawrence Devereaux	124.12	2	248.24
Allen Hyatt	120.92	4	483.68
Paul Larsen	124.12	4	496.48

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John Ciales	114.78	4	459.12
Lloyd Huntington	123.32	3	369.96
James Pendelton	120.92	4	483.68
Michael Juggert	120.88	0	0
Steven Rowley	120.92	3	362.76
Bobby Emery	124.12	2	248.24
Brad Timothy	124.12	4 1/2	558.54
Daniel Black	120.92	4	483.68
Daniel Bittick	114.74	3	344.22
Ron Prettyman	124.12	4	496.48
Jerry Shepherd	123.32	3	369.96
Kenneth Kay	106.99	3	320.97
Barrett Lemmon	124.12	0	0
Kelly Leroy	120.92	1	120.92
Ted Larsen	117.14	3	351.42
Randolph Winder	114.78	2	229.56
James Cave	117.68	3	470.72
Mark Winn	115.58	4	462.30
Brent Pierce	114.74	4	458.96
Michael Shannon	114.74	4	458.96
Thomas Kay	114.74	1	114.74
Russell Labrum	109.63	1	109.63
Tommy Dixon	117.68	4	470.72
Gary Stephenson	114.78	0	0

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Ferrill Wayman	114.78	0	0
Kevin Tucker	120.88	0	0
Ivan Anderson	111.38	1	111.38
Gary Anderson	124.12	2	248.24
Jack Batt	117.68	4	470.72
Robert Llewelyn	117.68	4	470.72
J. Mower	123.32	4	493.28
Bob Olson	117.68	4	470.72
Joe Collard	117.14	4	468.56
Lennie Gammon	124.12	4	496.48
James G. Gordon	111.38	1	111.38
Scott Johnson	114.74	2	229.47
Allen Wiswell	120.88	0	0
Eugene Griffin	112.38	2	224.76
Brent Bailey	120.08	3	360.24
Jay Oviatt	117.14	3	351.42
Glade Booth	114.78	0	0
Billy Dase	112.38	1 1/2	168.57
Kenneth Wilson	117.68	2	235.36
Indalesio Frutos	123.32	2	246.64
Edward Barnett	112.38	2	224.76
Floyd Anderson	117.68	4	470.72
John Blackham	120.92	4	483.68
Lamar Dyches	117.68	3	353.04

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Wallace Frandsen	120.92	2 1/2	302.30
Stan Densley	112.38	1	112.38
Tom Gonzales	112.38	0	0
Gerald Zabriskie	120.92	3 1/2	423.22
Robert Jensen	112.38	4	449.52
Thomas Memmott	117.68	4	470.72
Richard Richart	112.38	0	0
Jeffrey Nielson	117.68	2	235.36
Max Whiting	112.38	0	0
Don Allred	114.74	1	114.74
Max Nichols	112.38	0	0
Fred Sanchez	117.68	4	470.72
Richard Rigby	120.88	4	483.52
David Peterson	112.38	1	112.38
Dennis Peterson	117.68	0	0
Elmer Jones	124.12	4	496.48
Larry Turner	112.38	2	224.76
Boyd Johnson	120.88	2	241.76
Jim Malmgren	120.88	2	241.76
Darrel Butler	124.12	4	496.48
Karl Bessey	123.32	1	123.32
Gary Butler	124.12	1	124.12
David Monk	112.38	0	0
Samuel R. Dye	124.12	2	248.24

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Gary W. Olsen	120.88	1	120.88
Sheran Dyches	112.38	3 1/2	393.32
Gary Garlick	120.88	0	0
Kevin Wells	124.12	4	496.48
Kirk Christensen	120.92	2	241.84
Don R. Jensen	120.92	2	241.84
Harold Sparks	114.78	3	344.34
Joel Erickson	120.92	4 1/2	544.14
Leslie Hammond	112.38	2	224.75
Guy Gordon Young	120.08	3	360.24
David Mackay	120.88	2	241.76
Brady Miller	120.92	4 1/2	544.14
Ronald Nunley	123.32	2 1/2	308.30
Jerald Schade	109.21	4 1/2	491.44
Don Shelley	124.12	0	0
Arnold Moosman	124.12	2	248.24
Calvin Ross	124.12	2	248.24
Kendall Bartholomew	120.92	4 1/2	544.14
Evan Johnson	120.92	0	0
David Anderson	120.92	4 1/2	544.14
Kim Cooley	120.92	4	483.68
Jimmy Nay	124.12	3	372.36
Bart Norton	124.12	4	496.48
Charles Olsen	124.12	4	496.48

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Benjamin Dicaro	120.92	1 1/2	181.38
Jeffrey Anderson	124.12	4	496.48
Gary Birch	109.21	1	109.21
Linda Jensen	120.92	4 1/2	544.14
Robert Davis	120.92	3	362.76
Randy Mellor	123.32	0	0
Keldon Mann	123.32	4 1/2	554.94
Gary Boyd	123.70	4	494.82
Dennis Seely	120.92	4	483.68
Jeffrey Farmer	124.12	2	248.24
Kelly Duke	123.32	2	246.64
Robert Farrer	123.32	2	246.64
Ralph Keele	124.12	4	496.48
T. Curtis	124.12	2	248.24
Dee Laws	123.32	2	246.64
James Holt	120.92	1	120.92
Rudy Metelko	120.92	1	120.92

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November 9, 1988

Mr. Robert Jennings
UMWA Health & Safety Representative
UMWA District 22 Office
525 East 100 South
Price, UT 84501

Re: Local Union 1769 v. UP&L

Dear Bob:

Enclosed is a photocopy of the list of the names of miners, his/her daily rate of pay, number of days idled and the amount of compensation due in the above-captioned section 111 compensation case. I gathered this information from the payroll records obtained from UP&L (see enclosed photocopy of payroll records). We are seeking compensation for the following:

Each miner who worked the 8:00 a.m. to 4:00 p.m. shift on November 3, 1986 -- 4 hours of compensation.

Each miner who was scheduled to work the 4:00 p.m. to midnight shift on November 3, 1986 -- 8 hours of compensation.

Each miner who was scheduled to work the midnight to 8:00 a.m.; 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to midnight shifts on November 4, 5, 6 and 7, 1986 -- 8 hours of compensation.

A hearing in this matter is scheduled on December 15, 1988, in Salt Lake City, Utah. It is imperative that I am contacted by the Local or you by November 21,

Exhibit G

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1988, regarding any changes, additions, etc. on the list. If I am not contacted by you or the Local by November 21, 1988, I will assume the list is accurate and forward a copy to the company.

If you have any questions concerning the list please contact me at (202) 842-7345.

Sincerely,

Joyce A. Hanula
Paralegal

Enclosures