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SOL (MSHA) v. U.S. STEEL MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
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SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING
Docket No. WEVA 90-225
A.C. No. 46-01816-03745

v.

Gary No. 50 Mine

U.S. STEEL MINING COMPANY,
INC.,
RESPONDENT
AND

UNITED MINE WORKERS OF
AMERICA (UMWA),
INTERVENOR

DECISION

Appearances: Javier I. Romanach, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
the Petitioner;
Billy M. Tennant, Esq., U.S. Steel Mining Company,
Inc., Pittsburgh, Pennsylvania, for the
Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty 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 of \$157 for an alleged violation of mandatory safety standard 30 C.F.R. 75.511. The respondent filed an answer contesting the alleged violation and a hearing was held in Beckley, West Virginia. The UMWA failed to appear. The parties filed posthearing briefs, and I have considered their arguments in the course of my adjudication of this matter.

Issues

The issues presented in this proceeding are (1) whether the respondent has violated the cited standard as alleged in the proposal for assessment of civil penalty, (2) whether the violation was "significant and substantial," and (3) the

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appropriate civil penalty that should be assessed based on the criteria found in section 110(i) of the Act. Additional issues raised by the parties are identified and disposed of in the course of this decision.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. 30 C.F.R. 75.511 and 75.153.
4. Commission Rules, 20 C.F.R. 2700.1 et seq.

Stipulations

The parties stipulated in relevant part as follows (Exhibit ALJ-1):

1. The presiding judge has jurisdiction to hear and decide this matter.
2. The inspector who issued the contested citation was acting in his official capacity as a Federal coal mine inspector.
3. The citation was properly issued to the respondent's agents.
4. The cited conditions were timely abated.
5. Payment of the proposed civil penalty assessment of \$157 will not adversely affect the respondent's ability to continue in business.

Discussion

The contested section 104(a) "S&S" Citation No. 3237405, issued by MSHA Inspector Gerald L. Smith on May 9, 1990, cites an alleged violation of mandatory safety standard 30 C.F.R. 75.511, and the cited condition or practice is described as follows:

It was revealed during a 103(g)(1), Step 3 grievance held on 5-9-90 that electrical work was being performed on 5-2-90 in the Sulfer Branch section when repair was made on a damaged permanent type splice in a 300 U.D.C.

trailing cable by a nonqualified person or under the supervision of a qualified person.

Petitioner's Testimony and Evidence

Edward Ray Lewis, a shuttle car operator, testified that on May 2, 1990, he found "a split in the boot on the shuttle car cable," and reported it to his section foreman Harry Brooks. Mr. Brooks instructed him to "lock it out and get some tape and tape it." Mr. Lewis confirmed that he locked out the machine, obtained some black electrical tape "and wrapped it three or four coats and covered the split real good as best I could on the cable and boot." Mr. Lewis confirmed that he is not a certified electrician, that Mr. Brooks is not a certified electrician, and that there was no certified electrician on the section at the time in question. Mr. Lewis stated that he was not qualified to know whether the cable was repaired properly (Tr. 62-64).

On cross-examination, Mr. Lewis stated that he has worked as a shuttle car operator for approximately 5 1/2 years. He confirmed that during this period of time he has found "nicks" on shuttle car cables, and that he always reported it to his foreman or directly to the mechanic. Mr. Lewis denied that he had ever taped such cable nicks in the past, or that any other foreman had ever asked him to do so. He admitted that he has helped a mechanic tape such a cable "plenty of times," and that he did the actual taping in the presence of the mechanic or a certified person (Tr. 64-65).

Mr. Lewis stated that on the day in question, he saw no exposed cable wires and that the "split in the boot" was approximately 2 1/2 inches deep and long, and 1/2 inch wide. He explained that the "split" was in the boot of the permanent cable splice. He confirmed that the condition was "just a nick in the outer boot", and that he taped it as instructed by Mr. Brooks (Tr. 66).

Mr. Lewis further explained his prior taping of cables and he indicated that he has helped a mechanic tape a splice after the mechanic or certified electrician made the splice. He confirmed that he has also taped cables in the past with a mechanic either helping him or watching him, and he stated further as follows at (Tr. 69):

- Q. When we are just taping a nick, not making a splice, just taping a nick, what part does the mechanic play in that? What does he do while you are taping the nick in the cable?
- A. He usually does -- he's standing there.

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- Q. Just standing there. He does not really have to do anything; he is just there.
- A. Yes, sir.

Mr. Lewis stated that he did not object to the taping assignment by Mr. Brooks and he did not tell Mr. Brooks that he was not qualified to do the work. Mr. Lewis stated that it took him approximately 5 minutes to lock out the machine, obtain the tape, and tape the cable. He confirmed that he informed a safety committee member about the matter. Mr. Lewis did not believe that it was unsafe to do the work, and he did not believe that he was placing himself at risk because the power was off the machine. He also believed that it would have been unsafe to leave the cable nick "like that" (Tr. 72).

MSHA Electrical Inspector Gerald L. Smith confirmed that he issued the contested citation on May 9, 1990, and that he did so on the basis of information which he received in the course of a section 103(g)(1) Step 3 grievance proceeding at the mine. Based on the evidence from individuals involved in the grievance, a determination was made that electrical work had been performed by a person who was not a certified or qualified electrician or under the direct supervision of a certified or qualified person (Tr. 76-79).

Mr. Smith stated that Mr. Lewis testified at the grievance proceeding that he observed a damaged place in a permanent splice on the cable of the shuttle car which he had operated and that Mr. Brooks gave him a lock and told him to repair the damaged place in the splice by taping it. As a result of this information, Mr. Smith issued the citation and he did so because he believed the work performed by Mr. Lewis was electrical work and Mr. Lewis was not a certified electrician and did not perform the work under the direct supervision of a certified person (Tr. 79).

Mr. Smith stated that he considered the taping of the cable by Mr. Lewis to be electrical work and repair to the cable, even though the cable was not energized. Mr. Smith considered the citation to be significant and substantial because Mr. Lewis was not a qualified electrician and he could not determine whether he repaired the cable properly so that it would not fail or cause problems in the future. The insulated conductors inside the cable would need to be checked to determine whether there was any damage caused by the nick, and if the repairs are not properly made future dampness could cause an arc inside the cable and result in a blown cable. Although Mr. Lewis was not MSHA-certified, Mr. Smith had no knowledge of his qualifications to repair the cable, and Mr. Lewis stated that he had no previous training (Tr. 81).

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Mr. Smith stated that it was reasonably likely that "something could occur if the splice hadn't been properly repaired." He also stated that "taping the splice is not acceptable anyway" (Tr. 82). Mr. Smith did not believe that the splice was properly repaired because permanent splicing is covered by section 75.604. However, Mr. Smith confirmed that Mr. Lewis was not making a splice and that "all he did was just tape over top of a splice, which we don't accept anyway" (Tr. 83).

Mr. Smith believed that shock injuries could occur if someone were to handle a cable under wet conditions at the point where it is damaged. Mr. Smith did not know how many people were in the area on May 2, 1990, when Mr. Lewis repaired the cable, and he had no knowledge of the actual condition of the cable. Mr. Smith also did not know whether or not the mine safety committee pursued the issue of the condition of the cable, and he believed that the committee was only concerned about whether or not Mr. Lewis was a qualified person to do the work in question (Tr. 84-85).

On cross-examination, Mr. Smith confirmed that he never saw the cable and did not inspect it. He stated that the citation was issued a week after Mr. Lewis performed the work on May 2, and that he did not issue a citation for a violation of section 75.604, because the complaint concerned electrical work being performed by a noncertified person and not the type or quality of the work being performed. He believed that the taping of the cable would have been a violation of section 75.604 (Tr. 87).

Mr. Smith stated that a nick in the cable may be taped, but if the splice is nicked it may not be taped and a new splice must be made (Tr. 89). He further indicated that if there were a nick in the outer insulation of the cable, the fact that Mr. Lewis taped it would not be a violation of section 75.604. Mr. Smith explained the requirements of sections 75.517 and 75.604 (Tr. 90-94).

Mr. Smith stated that he would consider the taping of a nick on any portion of the cable to be electrical work, and that MSHA's policy prohibits an unqualified person from applying tape to a cable or to a splice. He believed that an unqualified person may not apply tape anywhere along the length of a trailing cable (Tr. 95). He considered this to be "electrical work" for the following reason (Tr. 95):

- Q. Why do you consider that electrical work?
- A. Because it's an electrical component of that piece of equipment, and it's the portion of that equipment that furnishes power to

operate that equipment. If you use electrical tape and take the regular steps pertaining to 511 which says that it should be locked and tagged out, if you do all that, so you must consider it electrical work or why would you lock and tag it out if it's not electrical work.

Mr. Smith explained the reasons for locking out the equipment, and he described the cable and cable splice in question (Tr. 96-98). He stated that if he were repairing a cable splice he would visually examine the inner conductors to be certain that they were not split or would allow moisture to get in. He confirmed that the cable is protected, and if it blows, the system will deenergize (Tr. 99-100).

Referring to MSHA's policy guidelines with respect to the application of section 75.511 (Exhibit P-5), Mr. Smith stated that the work performed by Mr. Lewis would "maybe" fall under Example No. 5 at page 59, "repair of electrical components of electrically-powered portable, mobile or stationary equipment" or Example No. 7, "electrical maintenance of permissible equipment" (Tr. 102). He agreed that the policy examples concerning what is considered to be "electrical work" and what is not are not clear cut, and he stated "I don't agree with a lot of them" (Tr. 104).

In response to further questions, Mr. Smith stated that the citation was issued after he participated in the contractual union-management grievance concerning the union's complaint that an unqualified person (Lewis) was required to do electrical work. Mr. Smith further stated that he made the determination that electrical work was performed and that a violation existed, and that the determination was in the form of the citation which he issued (Tr. 106-108). He confirmed that his "determination" consisted of the citation and abatement, and although notes were taken during the grievance, the information supplied by witnesses was not tape-recorded and no transcript of the grievance was made (Tr. 113). Mr. Smith stated that his determination that Mr. Lewis was not "qualified" was based on Mr. Lewis' statement to that effect which he made the day following the grievance (Tr. 114).

Respondent's Safety Manager Chris Presley confirmed that state mine inspectors were also called to hear the grievance and they too issued a citation after concluding that the work performed by Mr. Lewis was "electrical work." Respondent's counsel stated that the respondent contested that state finding, which was in the form of a citation, and that a hearing has been held, but no decision has been rendered (Tr. 108-111).

Respondent's Testimony and Evidence

Jeffrey Music, mine maintenance manager, testified as to his duties as a maintenance foreman for 12 years, and he confirmed that he has been a West Virginia certified electrician for 12 years. He confirmed that he is an MSHA "qualified person" pursuant to section 75.153 (Tr. 114-116).

Mr. Music was of the opinion that once a cable splice is made permanent, it becomes an integral part of the cable because it is permanent and nothing further is required to be done. If the splice is damaged, it is treated no different than other part of the cable. If the damage is great, the splice is remade. If the damage is superficial, such as the outer jacket, it is simply taped and sealed in the same manner as a regular piece of cable (Tr. 117).

Mr. Music stated that a nick in an unspliced portion of a trailing cable, where there are no exposed wires, is simply repaired by applying tape to the jacket. Similar damage to a permanent splice is repaired in the same manner. Splice kits are not used unless a permanent splice is being made. Cable nicks, where no conductors are exposed, are taped in order to keep the condition from becoming worse, to keep water out, and to prevent "nuisance tripping" of the breakers (Tr. 118).

Referring to the West Virginia State Administrative Mining Regulations (Exhibit R-2), itemizing examples of what is considered to be electrical work, and what is not, Mr. Music stated that this information is used as part of the mine training. He confirmed that as a qualified electrician, he is obligated to follow these guidelines. He pointed out that item No. 13, at page 2, states that a noncertified electrician may perform work taping or reinsulating cables if no conductors or bare wires are showing. In his opinion, Mr. Lewis was not asked to perform electrical work because he was not making a splice, and there were no exposed conductors or leaks (Tr. 119-120).

On cross-examination, Mr. Music stated that he was not at the Mine on May 2, 1990, and he agreed that all electrical work should be performed by a qualified person or under the direct supervision of a qualified person. In his opinion, a nick in a cable splice may be taped by a certified or noncertified person (Tr. 121). He believed that an outer cable jacket provides mechanical protection for the conductors inside the cable, and "in one sense of the word it would be a type of mechanical work" (Tr. 122).

Arguments by the Parties

During oral arguments in the course of the hearing, petitioner's counsel asserted that pursuant to MSHA's policy, the work performed by Mr. Lewis when he locked out the equipment and

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taped the nick in the shuttle car trailing cable, was electrical work within the meaning of section 75.511. Counsel stated that the taping of the cable by Mr. Lewis constituted a "repair," and that the locking out of any electrical equipment is required to be done by a qualified person or under the supervision of a qualified person. Counsel confirmed that the terms "qualified" and "certified" are used interchangeably. He took the position that Mr. Lewis and Mr. Brooks should have waited for an electrician to check out and repair the cable, and that simply because the cable was taped did not render it safe. Counsel concluded that due to the hazards presented by an unqualified persons repairing a trailing cable, the violation was significant and substantial (Tr. 52-54; 73-74). Counsel took the position that the intent of the cited standard is to insure that all electrical work is done by a qualified person, or under the supervision of a qualified person, so as to preclude any future problems. He concluded that on the facts of this case, Mr. Lewis was not only not qualified to do the work in question, but he was also not qualified to determine whether the cable was repaired properly.

In its posthearing brief, the petitioner asserts that the respondent may not rely on the less stringent state standard that allows a non-qualified person to tape cables where there are no visible conductors or bare wires, and that MSHA's mandatory standard is controlling. Petitioner also reiterates its argument that an unqualified person would not be able to properly repair a cable or to properly inspect it to ascertain the extent of any damage to the insulated conductors.

Petitioner concludes that the hazards involved in having unqualified persons working on or repairing trailing cables is well-documented, citing Karst Robins Coal Company, Inc., 10 FMSHRC 1708 (December 1988), where an unqualified miner was shocked and burned while working on a 480 volt trailing cable. However, I take note of the fact that in Karst Robins even though the miner's supervisor who assigned him the electrical repair work was the chief electrical supervisor and maintenance foreman, the roof bolter cable which caused the injury had not been deenergized and locked out or tagged at the power center. In the instant case, the trailing cable which was taped by Mr. Lewis was locked out and the shuttle car was deenergized.

Citing U.S. Steel Mining Company, Inc., 5 FMSHRC 1752 (October 1983), where Judge Broderick affirmed a violation of section 75.511, after concluding that an unqualified shuttle car operator who changed a light bulb in a shuttle car performed electrical work, the petitioner concludes that even though putting a piece of tape on a nick in a permanent splice in a trailing cable seems rather elementary so that no certification is required, it is still electrical work which only certified persons should perform. However, I also take note that in the

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case cited, the unqualified miner failed to lock out and tag the disconnecting device when he did the work, and that the changing of the light bulb required the removal of the lens and the insertion of the bulb having two prongs into a socket having two holes.

Respondent's counsel asserted that at no time prior to the hearing was he informed that the locking out of the equipment by Mr. Lewis was considered a violation, and he pointed out that the citation makes no reference to any "locking out" (Tr. 54-56). With regard to the alleged "electrical work" performed by Mr. Lewis, counsel asserted that there were no exposed wires or conductors in the cable, and that "all Mr. Lewis did that day was tape a cut in the outer insulation of a splice in a trailing cable of a shuttle car," and that he was "simply dealing with a nick in the neighborhood of 1 1/2 by 3 inches cut in the outer surface of the cable" (Tr. 56). Counsel concluded that this was not electrical work within the meaning of section 75.511.

Respondent's counsel further pointed out that the term "electrical work" is not defined in MSHA's Safety Regulations, but that it is addressed in MSHA's Program Policy Manual (Exhibit P-5). Counsel asserted that Mr. Lewis was not making a cable splice, which is one of the policy examples cited as "electrical work". Referring to the policy examples of work which is not required to be performed by a qualified person, counsel argued that "if handling an energized trailing cable is not electrical work, then merely applying tape to a de-energized trailing cable can hardly be considered to be electrical work" (Tr. 57). Counsel cited Example No. 10 - "mechanical repairs on electrically powered equipment, provided no energized parts or conductors are exposed"- as work similar to what Mr. Lewis was doing. Counsel argued that Mr. Lewis "was not doing anything electrical. He was simply physically applying tape to a cut in an outer insulation" (Tr. 58).

Respondent's counsel produced a copy of the rules and regulations of the State of West Virginia with respect to the certification of mine electricians, and he pointed out that many of the examples as to the type of work which does and does not qualify as "electrical work" are similar or identical to MSHA's policy guidelines. We also pointed out that the state qualifies the respondent's mine electricians and that they are duly recognized as such by MSHA. One of the examples of nonelectrical work which does not require a qualified person to perform states "Reinsulate or tape cables when there are no conductors or bare wires showing" (Exhibit R-2, No. (13), pg. 2; Tr. 58). Counsel took the position that the work performed by Mr. Lewis "is simply not electrical work under the State of West Virginia. Anybody can do it" (Tr. 127).

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In its posthearing brief, the respondent asserts that in view of the requirements of sections 75.514 and 75.604, a permanent splice provides at least the same degree of protection to the electrical conductors within the cable as does the outer insulation along the remainder of the cable. Respondent concedes that if conductors or bare wires are exposed, a permanent splice must be made by a qualified person to complete the electrical repair. However, the respondent maintains that where cable damage consists of a nick that does not expose conductors or bare wires, the application of tape by a competent person is an adequate mechanical repair because no electrical components of the cable are damaged, and there is no basis for concluding that damage to a cable permanent splice must be repaired any differently than the same degree of damage to the remainder of the cable.

Findings and Conclusions

The respondent is charged with an alleged violation of mandatory safety standard 30 C.F.R. 75.511, which provides as follows:

No electrical work shall be performed on low-, medium or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent. (emphasis added)

An individual is deemed to be a "qualified person" to perform electrical work within the meaning of section 75.511, if he or she meets the requirements stated in 30 C.F.R. 75.153. The petitioner's counsel confirmed that the terms "certified" and "qualified" are used interchangeably.

The respondent was cited for a violation of section 75.511 after the inspector received information that shuttle car operator Edward Lewis had locked out the machine and taped over a split or "nick" which he found on the boot of a permanent splice in the shuttle car cable. Mr. Lewis had reported the cable condition to his section foreman Harry Brooks, and Mr. Brooks instructed him to lock out the machine and tape the nick in the cable. Mr. Lewis did so, and the job took approximately 5 minutes.

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The parties agreed that Mr. Lewis and Mr. Brooks were not "qualified persons" pursuant to section 75.153 (Tr. 58-59). When the UMWA Union learned that Mr. Brooks had instructed Mr. Lewis to perform a job task which it believed constituted electrical work, it filed a safety grievance pursuant to section 103(g) of the Act. Based on the information received in the course of that grievance, the inspector concluded that the work performed by Mr. Lewis (locking out the machine and taping the nick in the cable) was electrical work, and since Mr. Lewis was not qualified to do the work pursuant to section 75.153, and since Mr. Brooks was not qualified to supervise the work, the inspector issued the citation.

The parties agreed that there were no exposed wires or conductors in the cable at the time Mr. Lewis taped over the nick in the splice boot, and there is no evidence concerning the overall condition of the cable, or the quality of the taping job performed by Mr. Lewis other than his statement that he "wrapped it real good." The inspector believed, but was not sure, that the splice was subsequently removed from the cable during the same shift. Respondent's Safety Manager Presley indicated that the splice was removed so that mine management could use it at any hearing, but that it was later disposed of (Tr. 127-128).

The term "electrical work" is not defined in MSHA's regulations or in its most recently published July 1, 1988, Program Policy Manual (Exhibit P-5). However, the West Virginia State Mining Regulations establishing standards for certification of persons performing electrical work in coal mines contain the following definition (Exhibit R-2):

Section 48-7-2. Definitions.

2.1 Electrical work - The term "electrical work" shall mean work consisting primarily of electrical construction, installation, testing, inspection, maintenance and repair tasks on electrical coal mining equipment, apparatus, circuits, and/or distribution circuits used in or around a coal mine.

MSHA's Program Policy Manual states that for the purpose of section 75.511, "electrical work is considered to be the work required to install or maintain electric equipment or conductors" (Exhibit P-5, pg. 58). Included among the examples of work required to be performed by a qualified person are "3. Making splices, connections and terminations in electric conductors and cables," and "7. Electrical maintenance of permissible equipment." Included among the examples of work that is not required to be performed by a qualified person is "10. mechanical repairs on electrically-powered equipment, provided no energized parts or conductors are exposed."

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The state regulations also contain examples of what is, and what is not, considered to be work required to be performed by a certified electrician. Included among the examples of work that is not required to be performed by a certified electrician is the identical provision found in MSHA's policy manual (Item #10 quoted above), and the following: "(13) Reinsulate or tape cables when there are no conductors or bare wires showing".

The violation notice issued by Inspector Smith describes the "electrical work" in question as a "repair made on a permanent type splice" in the trailing cable. However, the evidence reflects that Mr. Lewis did not make or repair a splice. He simply taped over a nick or split in the boot of the permanent splice, and other than a roll of electrical tape, he used no tools or other equipment. There were no exposed wires or conductors, and Mr. Lewis covered the nick with three or four wraps of tape, and it took him 5 minutes to lock out the machine, obtain the tape, and tape the cable. MSHA's policy does not prohibit the taping of a cable by a non-certified person when there are no conductors or bare wires showing.

Although it is true that Mr. Lewis was not a qualified person for purposes of electrical work, he admitted that he had often either taped cables in the presence of a mechanic or a certified person or assisted a mechanic in the taping of cables. He also admitted to the taping of cable splices after they were made by a mechanic or certified electrician. In the instant case, Mr. Lewis did not advise Foreman Brooks that he was not a qualified person, nor did he object to doing the work. Further, Mr. Lewis did not believe that he was at risk by doing the job, particularly since the machine was deenergized and locked out. Indeed, Mr. Lewis believed that it would have been unsafe to leave the cable nick in the condition which he found it.

The inspector stated that taping over a splice is not acceptable, and he was concerned that a nonqualified person such as Mr. Lewis was not competent to determine whether or not a cable splice was properly repaired to preclude future failure or other problems. The inspector stated that the taping of a splice is unacceptable and he believed that the splice was not properly repaired by Mr. Lewis as required by Section 75.604, and that the taping was a violation of that section. However, the inspector admitted that Mr. Lewis was not making a splice, and there is no evidence to indicate that simply taping a nick in a cable constitutes the making or repairing of a splice within the meaning of Section 75.603, which defines a temporary splice as "the mechanical joining of one or more conductors that have been severed," or Section 75.604, which covers permanent splices in trailing cables. Under the circumstances, I cannot conclude that the taping of the cable constituted a violation of Section 75.604, and I take note of the fact that no violations

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were issued pursuant to any of the mandatory standards dealing with trailing cable splices.

The inspector's belief that Mr. Lewis was performing "electrical work" when he taped over the nick in the deenergized and locked-out trailing cable was based on the fact that the cable was an electrical component of the piece of equipment in question (shuttle car), and his assumption that Mr. Lewis would not have locked out and tagged the equipment pursuant to Section 75.511, unless he performed electrical work. Section 75.511 requires the locking out and tagging of disconnecting devices by the qualified or trained person doing the work. However, the respondent was not cited for any violation because Mr. Lewis locked out and deenergized the equipment.

I cannot conclude that simply because someone performs work involving a piece of electrical equipment or component, such as a trailing cable, that such work ipso facto constitutes electrical work required to be performed only by a qualified person. MSHA's policy authorizes repairs to electrical equipment by nonqualified persons provided no energized parts or conductors are exposed. The guidelines also allow nonqualified persons to perform work handling energized trailing cables, inserting and removing cable couplers from receptacles, and transporting cables. It seems to me that this type of work, which does not require qualified people to perform it, present potential hazards greater than simply taping a nick in a trailing cable which has been deenergized and locked out by the person doing the taping.

I take note of the fact that MSHA's policy examples also provide that work involving the installation, repair, or guarding of trolley wires may be done by nonqualified persons. Although the policy goes on to explain that Section 75.510 requires training to repair and maintain energized trolley wires, it is not clear whether training is required to repair or install trolley wires which are not energized. I also note that pursuant to the state regulations, the taping or reinsulation of cables where there are no conductors or bare wires showing is not required to be performed by a certified electrician, even though "maintenance and repair tasks on electrical coal mining equipment" is included in the state definition of "electrical work."

With respect to the locking out of the equipment and trailing cable, I am not persuaded that electrical equipment is only locked out if electrical work is going to be performed. The inspector conceded that equipment is locked out regardless of any electrical hazard "if you're working on it," and he agreed that a person can be physically injured by a shuttle car or "hooked" by the cable if the machine is inadvertently started (Tr. 96). I take note of the fact that although Section 75.511 provides for

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the locking out and tagging of electrical disconnecting devices by the qualified person doing the work, if that person is unavailable, the locks and tags may be removed by a person "authorized" by the operator to do so. In the instant case, since his foreman gave Mr. Lewis the lock and instructed him to lock out the machine, I assume that Mr. Lewis was "authorized" to remove the lock.

After careful consideration of all of the evidence and testimony adduced in this case, including the arguments advanced by the parties in support of their respective positions, I conclude and find that the taping of the nick in the deenergized and locked out trailing cable by Mr. Lewis was more akin to mechanical work and was not electrical work within the meaning of the cited section 75.511, and that the work was not required to be performed by a qualified person pursuant to section 75.153. Under the circumstances, the contested citation IS VACATED.

ORDER

On the basis of the foregoing findings and conclusions, IT IS ORDERED THAT:

1. Section 104(a) "S&S" Citation No. 3237405, May 9, 1990, citing an alleged violation of 30 C.F.R. 75.511 IS VACATED.
2. The petitioner's proposed civil penalty assessment for the vacated citation IS DENIED AND DISMISSED.

George A. Koutras
Administrative Law Judge