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SOL (MSHA) V. REMOVAL & ABATEMENT
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

August 5, 1994

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION,	:	TEMPORARY REINSTATEMENT PROCEEDINGS
on behalf of LESLIE COLLINS, Complainant	:	Docket No. SE 94-474-DM SE MD 94-05
on behalf of LAWRENCE L. DUKES, Complainant	:	Docket No. SE 94-475-DM SE MD 94-06
on behalf of RAYMOND SAPP, Complainant	:	Docket No. SE 94-476-DM SE MD 94-08
on behalf of DAVID M. WILSON, Complainant	:	Docket No. SE 94-477-DM SE MD 94-09
v.	:	Plant No. 1 Mine ID 09-00111-RG2
REMOVAL & ABATEMENT TECHNOLOGIES, INC., Respondent	:	

DECISION

Appearances: James Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia for the Secretary of Labor;
Stephen E. Shepard, Esq., Augusta, Georgia, for the Respondent.

Before: Judge Melick

These consolidated cases are before me upon the request for hearing filed by Removal & Abatement Technologies, Inc., (RATI) under section 105(c)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., the "Act" and under Commission Rule 45(c), 29 C.F.R. 2700.45(c), to contest the Secretary of

Labor's application for Temporary Reinstatement on behalf of Leslie Collins, Lawrence L. Dukes, Raymond Sapp and David M. Wilson.

The proceedings are governed by Commission Rule 45(d), 29 C.F.R. 2700.45(d). That rule provides as follows:

> "The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miners' complaint was frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint was not frivolously brought. In support of his application for temporary reinstatement, the Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint was frivolously brought."

This scheme of procedural protections, including the statutory standard of proof provided by section 105(c)(2) of the Act, to an employer in temporary reinstatement proceedings far exceeds the minimum requirements of due process as articulated by the Supreme Court in Brock v. Roadway Express, Inc., 481 U.S. 252 (1087). See JWR v. FMSHRC, 920 F.2d 738 (11th Cir. 1990).

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FOOTNOTE 1

The substantive statutory framework for discrimination complaints is set forth in section 105(c)(1) of the Act. That section provides as follows:

> No person shall discharge or in any manner discriminate against or cause to be discharged or cause discrimination against or otherwise interfere with the exercise of the statutory rights of any miner, representative of miners or applicant for employment in any coal or other mine subject to this Act because such miner, representative of miners or applicant for employment has filed or made a complaint under or related to this Act, including a complaint notifying the operator or the operator's agent, or the representative of miners at the coal or other mine of an alleged danger or safety or health violation in a coal or other mine, or because such miner, representative of miners or applicant for employment has instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding, or because of the exercise by such miner, representative of miners or applicant for employment on behalf of himself or others of any statutory right afforded by this Act.

The standard of review in these proceedings is therefore entirely different from that applicable to a trial on the merits of the complaint. As stated by the court in JWR, supra. at page 747.

> The legislative history of the Act defines the 'not frivolously brought standard' as indicating whether a miner's complaint appears to have merit' - an interpretation that is strikingly similar to a reasonable cause standard. [Citation omitted]. In a similar context involving the propriety of agency actions seeking temporary relief, the former 5th Circuit construed the 'reasonable cause to believe' standard as meaning whether an agency's 'theories of law and fact are not insubstantial or frivolous." See Boire v. Pilot Freight Carriers, Inc., 515 F.2d 1185, 1189 (5th Cir 1975) cert denied, 426 U.S. 934, 96 S. Ct. 2646, 49 L.Ed 2d 385 (1976).

Jurisdiction

As a preliminary matter, respondent maintains that the Secretary is without jurisdiction under the Act to enforce the temporary reinstatement provisions of section 105(c) in the cases at bar. It is undisputed, however, that during relevant times RATI was an independent contractor (under verbal contract with Dublin Industries which in turn was under contract with the mine operator of the Kaolin processing facility at issue, ECC International) performing the services of removing asbestos roofing panels from the filter building at the subject plant in Sandersville, Georgia.

It is further undisputed that ECC International (ECCI) then operated Kaolin clay mines in the vicinity of this processing facility and utilized the subject facility in the work of preparing the Kaolin clay for various commercial uses. In particular, the filter building at issue was used to separate impurities from the Kaolin mine product. It is further undisputed that the subject Kaolin processing plant has been operated by ECCI under the jurisdiction of the Act and has accordingly been assigned a mine identification number by the Department of Labor's Mine Safety and Health Administration (MSHA). There should be no question that Kaolin clay is a mineral since the term "embraces all inorganic and organic susbtances [sic] that are extracted from the earth for use by man". A Dictionary of Mining, Mineral, and Related Terms, U.S. Department of the Interior, 1968.

Under section 3(h)(1) of the Act, "coal or other mine" includes "lands ... structures, facilities, equipment ... used in, or to be used in, the milling of such minerals [i.e. extracted in non-liquid form] or the work of preparing coal or other minerals ... . " Under section 3(d) of the Act the term

"operator" is defined as "any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine . . ."

Respondent appears to claim that its contacts with the mining industry were so minimal as to exclude its activities as an independent contractor from jurisdiction under the Act. In this regard John Hewitt, Secretary-Treasurer of RATI testified that its work at the ECCI processing plant on November 30, 1993 represented less than one half of one percent of its total man hours of work. It also appears that RATI had worked for 3 days at the ECCI Kaolin clay processing facility up to the time of the Complainants' discharge and was then working its fourth day.

There is, however, no limitation set forth in the Act restricting jurisdiction based upon the frequency or duration of an independent contractor's mine activities. Indeed, in Otis Elevator Company v. Secretary of Labor and FMSHRC, 921 F.2d 1285 (D.C. Cir. 1990), the court held that in section 3(d) of the Act the "phrase 'any independent contractor performing services ... at [a] mine' means just that". The court "did not confront ... whether there is any point at which an independent contractor's contact with a mine is so infrequent, or de minimis, that it would be difficult to conclude that services were being performed since [Otis] conceded that it was performing limited but necessary services at the mine" (921 F.2d at 1290 n. 3). Otis had a contract to service the shaft elevators at a mine.

In Lang Brothers, Inc., 14 FMSHRC 413 (1991), Lang Brothers had an annual contract to clean and plug gas well sites for Consolidation Coal Company "to ensure that natural gas does not seep through the well into a mining area and create a safety hazard." 14 FMSHRC 414. In holding that Lang Brothers was an "operator," the Commission stated:

> Lang's work at the well sites ... was integrally related to Consol's extraction of coal. Cf. Carolina Stalite, 734 F.2d at 1551. The sole purpose of Lang's cleaning and plugging contract with Consol was to facilitate Consol's extraction of underground coal. 14 FMSHRC at 418.

The Commission did not adopt the restrictive interpretation of Old Dominion Power Company v. Secretary of Labor and FMSHRC, 772 F.2d 92 (4th Cir. 1985) (implying that an independent contractor must have a "continuing presence at the mine" to be an "operator" under the Act). Rather, it held that the de minimis standard may be measured by the significance of the contractor's presence at the mine, as well as the duration or frequency of its presence. The Commission noted that even though Lang's actual presence at

the mine to clean and plug wells was for a short period its activity was an integral part of Consol's extraction process.

In Bulk Transportation Services, Inc., 13 FMSHRC 1354 (1991), the contractor had a contract with a coal mine operator to transport coal from the mine to a generating station 40 miles away. The Commission noted that Bulk had a substantial presence at the mine -- "[T]here is a constant flow of truck drivers in and out ... four to five days a week" -- 13 FMSHRC at 1359 -- but it focused on the significance of Bulk's activities to the extraction process in determining that Bulk was an operator subject to the Mine Act. "Given the undisputed fact that Bulk was Beth Energy's exclusive coal hauler between Mine No. 33 and the generating station, and given the quantities of coal hauled by Bulk, we agree with the judge that Bulk's services in hauling coal were essential and closely related to the extraction process." 13 FMSHRC at 1359.

While, as noted, the Act does not, on its face, condition the jurisdiction of independent contractors upon their relation to the extraction process or upon the duration or frequency of their contact with a mine, even assuming, arguendo, that the present Commission nevertheless would require evaluation of such factors, the activities of respondent herein would meet those tests. It is undisputed that respondent herein was at the ECCI preparation plant facility for four consecutive days on a project that was as of that date yet incomplete. During that period it maintained a work crew consisting of a foreman and at least six men working full time at the removal of an asbestos laden roof of the filter building.

It is undisputed, moreover, that these roof panels had deteriorated and presumably, therefore, constituted a hazard to the ECCI miners working in the filter plant from both asbestos fibers and the possibility of injury from such deteriorated roof panels falling. It is also clear that the processing that occurred within the subject filter building was essential to the commercial use of the Kaolin clay product. Within the filter building and beneath the deteriorating roof were centrifuge machines, rotary drum filters and sand grinders with motors and gears. It may reasonably be inferred that RATI's presence at the subject mine using its expertise in handling asbestos to remove the deteriorating asbestos panels prevented the interruption of the processing of the mine product. The presence of RATI was, therefore, significant and related to the processing of a mineral and its continual presence for at least four consecutive days was of such duration as to warrant a finding that such presence meets the various tests previously utilized by the Commission. Under the circumstances, the jurisdictional prerequisites described in prior Commission decisions have been met in these cases. In any event, the test of jurisdiction in these Temporary Reinstatement Proceedings, as with other issues presented in these cases, is

whether there is "reasonable cause to believe" that the Secretary has jurisdiction under the Act. That standard is clearly met herein.

The Merits

Under its contract, RATI was to remove asbestos-laden roof panels varying in size from 5 to 9 feet long by 3 to 4 feet wide from the ECCI filter building. The subject roof was 40 feet above ground at the eves rising to 45 to 50 feet above ground at its peak. Beneath the roof were centrifuge machines, rotary drum filters, and sand grinders with motors and gears on top. Where there was no machinery, there was bare concrete floor. It is undisputed that the roof panels were deteriorated and unsafe to walk upon and as the panels were removed there were increasing areas exposing open space between support beams.

RATI commenced work at the subject plant on November 30, 1993. On December 3, 1993 a six man crew began work around 7:00 a.m. supervised by Foreman Rick Greene. The panel fasteners had, for the most part, already been removed during the previous two days and the work of removing the panels was to begin at this time. Bennie Bryan, ECCI construction supervisor, had previously supplied safety harnesses, fall arresters (with 20 foot retractable cables attached) and 250 to 300 feet of steel safety cable with turnbuckles to Glen Shriver of Dublin Industries for the use of the RATI employees working on the roof. According to Bryan, RATI Foreman Rick Greene was aware that these safety devices had been provided. Bryan testified that the steel cable, which was the responsibility of Dublin Industries to install, was not used and necessary anchor points were never welded into place.

Bryan testified that on one occasion early in the morning of December 3 he saw Foreman Greene on the roof without his safety belt attached and warned him about working without being secured. He then also observed two of work crew on the roof wearing their safety belts but he could not then tell whether those belts had been properly tied off.

Complainant Lawrence Dukes testified that he had worked for RATI for 6 years prior to December 3. He had prior experience working on roofs and working with safety belts. Using photographs of the work scene taken on December 4 Dukes described the area. The area depicted in the photograph identified as Government Exhibit 3 shows the roof area with some roof panels still in place in the left side of the photograph, an area with some panels removed in the center of the photograph and, to the right, what is known as a "walkboard". Dukes described the scene depicted in the photograph identified as Government Exhibit 4 as the end of one of the walkboards not tied down. According to

Dukes, this condition also existed at the time of the crew's work refusal on December 3.

Dukes testified that on the first day at the ECCI job site on November 30 the RATI employees received safety training and unloaded their work materials but performed no work on the roof. On December 1 and 2 they worked on the roof but only removing the nut and bolt fasteners on the panels. In performing this work they were able to attach their safety belts with their three-foot-long lanyards onto a walkboard placed parallel with the roof. The short lanyards did not interfere with this work.

According to Dukes, they began removing the panels on December 3. Wilson and Walker initially removed the panels and passed those panels to Hayes and Sapp. Hayes and Sapp would then walk to the peak of the roof with the panels, down the other side and hand the panels to Dukes who then lowered them to the ground with a rope adjacent to the catwalk ladder. (See Government Exhibit 6). According to Dukes, only two safety harnesses were then made available to the six crewmen. These harnesses were distinguishable from the safety belts used by the remainder of the crew in that they offered greater support and were provided with fall arresters attached to a retractable 20 foot cable. These fall arresters work similar to an automobile seat belt in that upon a sudden movement or fall the arrester grabs hold and prevents further movement while at the same time provides a retractable cable enabling work up to 20 feet from the tie off point. These harnesses were provided to Wilson and Walker because, according to Foreman Rick Greene, they were performing the most dangerous work in removing the panels while exposed to the open roof area. Because of Wilson's large size he was, however, unable to use the full harness and, therefore, used only his safety belt with a fall arrester attached. According to Wilson he later transferred this harness and the fall arrester to "Nathaniel" (presumably Nathaniel Dukes) who later substituted for Wilson in the particularly dangerous work of removing the panels.

At that time Wilson, along with the other three crew members on the roof were dragging the panels to the roof peak and down the other side to be lowered to the ground. According to their testimony, their safety belts and short three-foot-long lanyards could not be tied off to anything that would permit them to continue performing their assigned work. According to the complainants the only thing they could tie their lanyards into was the walkboards but with only a three foot lanyard it would then be impossible to transport the panels in accordance with their assigned duties. According to Dukes, they would be "locked down" onto the walkboard and would be unable to move except for short distances and could not handle the large panels. Since there was nothing for those employees to tie onto, they were walking about the roof area transporting the panels without their

safety belts secured. They were, accordingly, exposed to the hazard of falling through the open space where the panels had been removed, through one of the deteriorated panels, or off the edge of the roof.

According to Dukes, following the removal of some of the panels the work crew returned to the ground for their 9:00 a.m. break. At that time they told Foreman Rick Greene that it was unsafe to work on the roof without the steel cable (earlier provided by Bryan but not installed) to hook onto. Around this time RATI field superintendent James Bellamy arrived at the worksite and was told by all of the work crew that the roof was unsafe since there was no way to tie off their safety lines. According to Dukes, Bellamy went onto the roof himself and returned telling the crew that the roof was safe and that if we wanted our jobs "you better get your asses back onto the roof". When the crew continued to refuse to return to the roof, Bellamy reportedly stated that "if you don't go back on the roof, you're quitting". When the crew continued their work refusal they returned with Bellamy to the RATI offices in Augusta to meet with company president Ernest Hall. Apparently not then able to meet with Hall they were told to return later that day to pick up their checks.

The crew later returned to Hall's offices around 4:00 p.m. and were handed their checks in an envelope, which also contained termination slips. Apparently a heated meeting thereafter followed between the work crew and Bellamy and Hall. They wanted to know why they were terminated. According to Dukes they told Hall that they had no way to tie off with their safety belts. Hall apparently responded that they had what they needed to work with and that they were being dismissed for refusing to do their job. Dukes recalled that during this meeting Carl Walker, one of the work crew, asked for more pay and Hall responded that he had already promised him more pay. According to Dukes, there was no other discussion about pay.

Dukes has had no disciplinary problems in his previous 6 years with the company. He had previously worked on roofs for RATI but been provided with a tie-off similar to the steel cable which was available but not used in this case. Dukes further testified that the white rope appearing in photographs Government Exhibits 7 and 8 could not safely be used to tie onto because it was not strong enough. It was used only as a device to warn people from accidently walking off the edge of the roof. According to ECCI construction supervisor Bennie Bryan, the rope was only one-half inch to five eighths inch thick.

Bryan corroborated the testimony of Dukes in essential respects. Bryan testified that on the morning of December 3 all four of the complainants reported to him that it was unsafe to work "up there on the roof" and that Rick Greene would not do

anything about it. Bryan further testified that one of the group approached him around 8:35 that morning and also told him that they were having problems and that it was unsafe to work on the roof. He had no prior complaints from the crew. Following these complaints Bryan approached RATI Foreman Rick Greene. Greene responded that there was nothing unsafe and that the only thing they wanted was more money. Subsequently, after Greene met with his field superintendent James Bellamy, Greene told Bryan that he was taking his crew back to Augusta and that he was having trouble with them. It was Bryan's opinion that the steel cable should have been used to enable the work crew to tie onto. It was the "proper way to do it".

Another one of the complainants, David Wilson, testified that he had worked for RATI for over three years as an asbestos worker removing asbestos and roofing materials. He corroborated the testimony of Dukes and Bryan in essential respects. He clarified that on December 1 and 2 while they were removing the bolt fasteners from the panels they used three walkboards vertically up the roof and one walkboard horizontally across the roof. With this system they could slide along the horizontal walkboard with their safety belts attached. Wilson further explained that on December 3 as they began removing the panels they had only one walkboard in a vertical position as depicted in photograph Government Exhibit 3. Initially Wilson had a fall arrester attached to his safety belt while he was lifting the panels and passing them to the next man on the walkboard. Later he gave his arrester to another crewman who was prying the panels loose and Wilson was then dragging panels up the roof as they were handed to him and passing them on to Sapp and Collins on the other side of the roof. At that time there was nothing onto which to attach his safety belt. Likewise when he passed the panels over to Sapp and Collins on the other side they had nothing to tie onto. Wilson further testified that during the course of their work that morning he stepped on an unsecured walkboard which moved, causing Sapp to almost fall. According to Wilson only three of the eight walkboards had been tied down.

According to Wilson, when they returned to the ground on their break, Dukes told Foreman Greene that the roof was unsafe and asked him that he would appreciate it if they would put the cable up. In addition, when field superintendent Bellamy showed up he was told that the roof was unsafe and that they needed the cable. Bellamy thereafter checked the roof and told the crew that it looked fine to him. They were told that if they wanted their jobs to get their "asses" on the roof. Wilson denies that he had asked for any increased pay. Wilson also corroborates Dukes that in the meeting at 4:00 p.m. with Hall they told him that "all he had to do was put up the safety cable and the job would be finished." Wilson had never previously been disciplined.

Complainant Leslie Collins had worked as an asbestos worker for RATI for approximately 6 months prior to December 3, 1993. Collins corroborates the testimony of the previous witnesses in essential respects and noted that while he was working on the roof on December 3 he too had nothing to tie his safety belt onto while he was working. The panels were handed to him by others and he lowered the panels by rope to the floor below. He also maintains that Foreman Greene observed him from the ground below working without being tied off. Collins admits that he had been suspended by RATI for 30 days in a disciplinary action. He maintains that he did not ask for more pay.

Complainant Raymond Sapp also corroborates the other complainants in essential respects. He had worked for three years as of December 3 for RATI and had never previously been disciplined. During the morning of December 3 he and Hayes were carrying the panels to Dukes and Collins. They would walk up the walkboards with the panels in hand but had nothing to tie their safety belts onto. At one time he almost fell off the building when another worker stepped on the same unsecured walkboard on which he was standing. Sapp also maintains that he never asked for more pay.

I find the testimony of the complainants to be credible. That testimony is also corroborated in critical respects by the testimony of ECCI construction supervisor Bennie Bryan and, indeed, by RATI Foreman Ricky Greene. On the basis of that testimony and evaluating that testimony under the principles governing analysis of discrimination cases under the Act I conclude that the complaints herein were not frivolously brought and the applications for temporary reinstatement must, therefore, be granted.

The principles governing analysis of a discrimination case under the Act are well settled. A miner establishes a prima facie case of prohibited discrimination by proving that he engaged in protected activity and that the adverse action complained of was motivated in any part by that activity. Secretary on behalf of Pasula v. Consolidation Coal Co., 2 FMSHRC 2786, 2797-800 (1980), rev'd on other grounds, sub nom. Consolidation Coal Co. v. Marshall, 663 F.2d 1211 (3rd Cir. 1981); Secretary on behalf of Robinette v. United Castle Coal Co., 3 FMSHRC 803, 817-18 (1981). The operator may rebut the prima facie case by showing either that no protected activity occurred or that the adverse action was in no part motivated by protected activity. Pasula, 2 FMSHRC at 2799-800. If the operator cannot rebut the prima facie case in this manner, it nevertheless may defend affirmatively by proving that it also was motivated by the miner's unprotected activity and would have taken the adverse action in any event for the unprotected activity alone. Pasula, 2 FMSHRC at 2800; Robinette, 3 FMSHRC at

817-18; see also Eastern Assoc, Coal Corp. v. United Castle Coal Co., 813 F.2d 639, 642 (4th Cir. 1987).

A miner's refusal to perform work is protected under the Mine Act if it is based upon a reasonable, good faith belief that the work involves a hazard. Robinette, 3 FMSHRC at 808-12; Conatser v. Red Flame Coal Co., 11 FMSHRC 12, 17 (1989); see also Simpson v. FMSHRC, 842 F.2d 453, 458 (D.C. Cir. 1988). In considering whether a miner's fear was reasonable in terms of a hazard, the perception of the hazard must be viewed from the mine's perspective at the time of the work refusal. Secretary of Labor on behalf of PLratt v. River Hurricane Coal Co., 5 FMSHRC 1529 (1983); Haro v. Magma Copper Co., 4 FMSHRC 1935 (1982). To be accorded the protection of the Mine Act, the miner need not objectively prove that an actual hazard existed. Secretary of Labor on behalf of Hogan & Ventura v. Emerald Mines Corp., 8 FMSHRC 1066 (1986); Secretary of Labor on behalf of Cooley v. Ottawa Silica Co., 6 FMSHRC 516 (1984).

The Commission has also held that: "Proper communication of a perceived hazard is an integral component of a protected work refusal, and responsibility for the communication of a belief in a hazard underlying a work refusal lies with the miner." Conatser 11 FMSHRC at 17, citing Dillard Smith v. Reco, Inc., 9 FMSHRC 992, 995-96 (1987). "[T]he communication requirement is intended to avoid situations in which the operator at the time of a refusal is forced to divine the miner's motivations for refusing work." Smith, 9 FMSHRC at 995. The miner's failure to communicate his safety concern denies the operator an opportunity to address the perceived danger and, if permitted, would have the effect of requiring the Commission to presume that the operator would have done nothing to address the miner's concern. Id. Thus, a failure to meet the communication requirement may strip a work refusal of its protection under the Act. Finally, the Commission has held that the "communication of a safety concern 'must be evaluated not only in terms of the specific words used, but also in terms of the circumstances within which the words are used ....'" Conatser, 11 FMSHRC at 17, quoting Secretary on behalf of Hogan and Ventura v. Emerald Mines Corp., 8 FMSHRC 1066, 1074 (1986), aff'd mem., 829 F.2d 31 (3d Circ. 1987).

Within the above framework of law and considering the credible testimony of the Complainants and its corroboration I find that the Secretary has clearly met his burden of proving that the four complaints herein were not frivolously brought. In reaching these conclusions I have not disregarded the argument of Respondent that the only issue raised by Complainants was one of money, i.e., that they wanted $1.00 an hour wage increase to continue working. However, I can give this argument but little weight, not only in light of the credible testimony of the Complainants themselves but considering the testimony of RATI Foreman Rick Greene.

Greene acknowledged that the Complainants in fact did raise with him the issue of dangerous conditions on the roof. Greene testified that he in fact thereafter went onto the roof himself to inspect the conditions but concluded that it was not unsafe and thereafter did nothing to address the complaints. Of course, if the work refusal was, in fact, based solely on a demand for higher pay as Respondent argues, there would have been no reason for Greene to have proceeded back onto the roof to make his own safety evaluation after the work crew expressed its work refusal. The Complainants' testimony is significantly corroborated also by the disinterested testimony of ECCI construction supervisor Bennie Bryan, to whom the Complainants also raised the issue of safety and, in conversations with Greene, was told by Greene that "he was having a problem getting his people to work on top of roofs because they (workers) thought it was unsafe to work on top of roofs." (Respondent's Exhibit 1).

ORDER

Removal and Abatements Technologies, Inc. is hereby directed to immediately reinstate Leslie Collins, Lawrence L. Dukes, Raymond Sapp and David M. Wilson to the positions that they held immediately prior to "compensation status" or to a similar position at the same rate of pay and benefits and with the same, or equivalent, duties assigned to them.

Gary Melick
Administrative Law Judge
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