FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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FEB 05 2016

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), On behalf of RICHARD B. HARRISON Complainant	TEMPORARY REINSTATEMENT PROCEEDING Docket No. WEVA 2015-811-D MORG-CD-2015-20
v.	Mine I.D.: 46-01433
MARION COUNTY COAL COMPANY, And its successors Respondent	Mine: Loveridge No. 22

ORDER DENYING RESPONDENT'S MOTION TO DISSOLVE ORDER GRANTING JOINT MOTION FOR TEMPORARY ECONOMIC REINSTATEMENT

On June 9, 2015, pursuant to Section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 ("Act"), 30 U.S.C. §801, *et. seq.*, and 29 C.F.R. §2700.45, the Secretary of Labor ("Secretary") filed an Application for Temporary Reinstatement of miner Richard B. Harrison ("Harrison" or "Complainant") to his former position with Consolidation Coal Co., now known as Marion County Coal Company (herein "Respondent") at its Loveridge #22 Mine[1] pending final hearing and disposition of the case. Respondent requested a hearing on the Secretary's Application and on June 26, 2015, I conducted a hearing in this matter. Pursuant to the Commission's rules, on July 2, 2015, I issued a Decision and Order Reinstating Richard B. Harrison, effective immediately, to his former position at the mine at the same rate of pay, hours worked and with all benefits he was receiving at the time of his discharge.

Contrary to the Decision and order of reinstatement, Mr. Harrison was not immediately reinstated. Rather, on July 16, 2015, I received a Joint Motion to Approve Settlement Regarding Temporary Reinstatement from Respondent and the Secretary. This Motion provided for temporary economic reinstatement in lieu of physical reinstatement. This motion provided, *inter alia*, at paragraph 8, "**Economic reinstatement was proposed by the Respondent** to minimize

[1] This mine, located in Marion County, West Virginia, was purchased by Murray Energy Company. from CONSOL Energy, Inc. in December 2013 and its name has been subsequently changed to Marion County Coal Company.

any potential for disruption in the workplace while this case is pending. ..." (Emphasis supplied) This Motion also provided:

> 5. Mr. Harrison's period of economic temporary reinstatement will terminate upon a finding by MSHA that section 105(c)(1) has not been violated. Alternatively, if MSHA finds that the discrimination complaint has merit and causes a Complaint of Discrimination to be filed with the Review Commission, Mr. Harrison's temporary reinstatement shall expire only after any decision or other similar order from the Federal Mine Safety and Health Review Commission becomes a final order that is not appealed by the Secretary or Respondent.

Because Mr. Harrison was not represented by counsel at that time,[2] I convened a conference call with the parties and Mr. Harrison to insure that Mr. Harrison was satisfied with temporary economic reinstatement pending the final outcome of his discrimination complaint made to MSHA. After he affirmed that he was satisfied and did not wish to be reinstated, on July 28, 2015, I issued an Order Granting Joint Motion for Temporary Economic Reinstatement. This Order specifically included paragraphs 5 and 8 noted above.

On January 19, 2016, Respondent filed a Motion to Dissolve Order Granting Joint Motion for Temporary Economic Reinstatement ("Motion to Dissolve"). On January 28, 2016, the Secretary and the Complainant filed oppositions to the Motion to Dissolve. In support of its Motion, Respondent asserts that the mine was idled until January 18, 2016,[3] and Harrison has been placed in a better position than he would have been had he been reinstated. Further, Respondent asserts that it was informed that counsel for Harrison issued a comment to the media that Respondent placed Harrison on temporary economic reinstatement because it wanted to avoid "demonstrat[ing] [that] workers have rights they can use to speak out on the job";[4] and that Respondent wishes to avoid any appearance such is the case.

The Secretary and the Complainant oppose the Motion to Dissolve on the basis that Respondent has presented no evidence to support either dissolution or tolling. The Secretary's Opposition recites many reasons why dissolution is not appropriate, all of which I find to have merit. In sum, I conclude that Respondent is not entitled to dissolution of my Order Granting Joint Motion for Temporary Economic Reinstatement.

Initially I note that Respondent itself sought economic reinstatement of Harrison rather the physical reinstatement for the purpose of avoiding "disruption in the workplace". Further it agreed that economic reinstatement would continue until either the Secretary declined to issue a Complaint of Discrimination[5] or until there was a final decision by the Review Commission or

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[2] Mr. Harrison is now represented by counsel.

[3] No further details of this alleged mine idling were included in the Motion.

[4] Respondent did not identify the source of the alleged comment by the Complainant's counsel.

[5] The Secretary issued a Complaint on October 19, 2015, at WEVA 2016-48-D.

an appropriate Court of Appeals if the Respondent appealed an unfavorable decision by the Commission. The only justification for Respondent to now seek dissolution is that it has had a change of heart, as noted by the Secretary in his Opposition to the Motion to Dismiss, that was occasioned by the Complainant's counsel's alleged remarks to the media.[6] It would thus appear that the Motion to Dissolve was in retaliation for such perceived remarks, whether true or not. Clearly, this is a totally insufficient basis for dissolution.

It is well settled Commission law that a valid settlement agreement cannot be reopened or altered unless there are grounds of fraud or mutual mistake. *United Mine Workers of America, Local Union 1769, District 22 v. Utah Power and Light Company*, 12 FMSHRC 1548, 1555 (Aug. 1990). Moreover, the Federal Rules of Civil Procedure, particularly Rule 60(b), do not provide a basis for Respondent's requested relief as there has been no mistake, inadvertence, fraud, misconduct or other applicable reason for relief. See also *Secretary of Labor (MSHA) o/b/o Juan G. Pena v. Eisenman Chemical Company*, 11 FMSHRC 2166, 1267-68 (Nov. 1989). In the instant case Respondent sought and agreed to temporary economic reinstatement and cannot now claim that it was mistaken so as to entitle it to dissolution of the settlement. Respondent, like all parties to a settlement, should be bound by all the terms it negotiated until the agreement is terminated by its terms.

Respondent's Motion to Dissolve is without merit and **IT IS HEREBY DENIED**.

Janet G. Harner
Administrative Law Judge

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[6] In this regard, I note that there have also been remarks to the media made by Respondent representatives since I issued my Decision on July 2, 2015, concerning this case.