

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

May 28, 1998

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| SECRETARY OF LABOR, | : | DISCRIMINATION PROCEEDING |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA), | : | Docket No. KENT 98-128-D |
| on by half of JERRY M. CAUDILL, | : | |
| Petitioner | : | BARB-CD 98-04 |
| v. | : | |
| | : | Mine No. 68 |
| LEECO, INC., | : | Mine ID 15-17497 |
| Respondent | : | |

DECISION APPROVING SETTLEMENT

Before: Judge Barbour

This proceeding is brought by the Secretary of Labor on behalf of the complainant, Jerry Caudill, pursuant to section 105(c)(2) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 815(c)(2)). The Secretary alleges that Caudill, who was employed by Leeco as an electrician/repairman, was suspended and subsequently discharged because he was designated a miner's representative and carried out duties pursuant to that designation.

Because Caudill was reinstated temporarily as the result of a previous proceeding (*see Secretary of Labor, MSHA, On behalf of Jerry Michael Caudill v. Leeco, Inc.*, 19 FMSHRC 1884 (December 1997)), in the instant proceeding the Secretary seeks permanent reinstatement, as well as back wages, benefits, interest, and expenses. Also, the Secretary seeks orders directing the company to cease and desist discriminatory activities toward its employees and to expunge all references to Caudill's discharge from his personnel files. Finally, the Secretary requests a civil penalty be assessed against Leeco for its violation of section 105(c). Leeco denies it violated the Act, and asserts Caudill does not have a viable claim for relief.

After the initial pleadings were filed, the parties began discovery, and the matter was scheduled for trial. On April 8, 1998, in a telephone conference, counsels advised me the matter was settled. Counsels explained the settlement consisted of two parts. First, the Secretary and Leeco agreed to resolve the Secretary's allegation that Leeco violated the Act. As part of the agreement, Leeco committed itself to conduct classes for all employees in miner's rights under the Act and to pay a specified civil penalty.

Second, Leeco and Caudill agreed to resolve all issues raised by Caudill's assertion the company discriminated against him. Counsels stated the parties desired that part of the agreement be sealed and be subject to review only by me, the Commission, and/or a higher appellate judicial authority.

Counsels now have filed a joint motion to approved the settlement. In the motion they state the settlement between Leeco and Caudill is set forth in a separate document filed simultaneously with the motion and signed by a representative of Leeco and by Caudill. In addition, counsels for the company and Caudill have filed a motion to make confidential the agreement between Leeco and Caudill and to seal the record as it relates to the agreement.

I have reviewed the motions, as well as inspected, in camera, the agreement between Leeco and Caudill.

The agreement between Leeco and the Secretary is as follows:

1. Leeco will pay a civil penalty of \$25,000 for violating section 105(c) of the Act;
2. Leeco will insure all management employees involved with working and or making personnel decisions at Mine No. 68, including section foremen, shift foremen, mine superintendents, safety personnel, and corporate officers attend a 1 hour training session on the rights of miners and their representatives under sections 105(c) and 103(f) of the Act and under 30 C.F.R. Part 40. The session will be conducted by persons mutually agreeable to Leeco and the Secretary and will be held within 60 days of the date of this Decision;
3. For actions or proceedings other than those brought under the Act, nothing in the settlement shall be deemed an admission by Leeco that it violated the Act or regulations promulgated under the Act.

In support of the agreement, the parties note that Leeco is a large operator, that in the previous 2 years, Leeco has violated section 105(c) of the Act twice, and that payment of the civil penalty, and the other damages agreed to by the parties, will not affect Leeco's ability to continue in business.

The agreement between Leeco and Caudill is comprehensive. It resolves all claims, damages, and liabilities up to the effective date of the agreement, resulting from Caudill's claim of discrimination as filed with MSHA. The agreement also resolves Caudill's status as a miners' representative and any claims he may have for wrongful discharge. The agreement contains a provision Leeco and Caudill will not commence, maintain, or continue any action or proceeding against each other based on Caudill's claims and status. The agreement also contains confidential provisions regarding releases, covenants, employment, and compensation.

Based upon my review of all submitted materials, I conclude the proposed settlement agreement is reasonable and in the public interest. **ACCORDINGLY**, the Joint Motion to Approve the Settlement in **GRANTED**, and the settlement is **APPROVED**.

I also conclude Leeco's and Caudill's request for an order of confidentiality is well advised. **ACCORDINGLY**, while the terms and conditions of the settlement as it relates to Leeco and Caudill are approved in all respects, they are **DECLARED CONFIDENTIAL**. Counsels and the signatories to the Leeco/Caudill agreement (the representative of Leeco and Caudill) are **DIRECTED** not to discuss or to otherwise communicate the terms and conditions of the agreement with anyone other than one another, and the joint motion to approve the confidential settlement agreement are **PLACED UNDER SEAL** subject to review only by the Commission or another appellate body.

ORDER

Leeco is **ORDERED** to pay to the Secretary the sum of \$25,000 within 30 days of the date of this Decision. Further, Leeco and the Secretary are **ORDERED** mutually to agree upon persons to conduct the specified training. The training **WILL** be conducted within 60 days of the date of this Decision;

Leeco and Caudill are **ORDERED** to comply in full with the terms and conditions of their **CONFIDENTIAL** agreement and to do so within the time frames stated.

David F. Barbour
Administrative Law Judge

Distribution:

Mary Beth Bernui, Esq., Office of the Solicitor, U. S. Department of Labor, 2002 Richard Jones Road, Suite B-201, Nashville, TN 37215-2862 (Certified Mail)

Tony Opeppard, Esq., Mine Safety Project, Appalachian Research and Defense Fund of Kentucky, Inc., 630 Maxwellton Court, Lexington, KY 40508 (Certified Mail)

Marco M. Rajkovich, Esq., Wyatt, Tarrant & Combs, 1700 Lexington Financial Center, Lexington, KY 40507-1746 (Certified Mail)

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