

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

November 18, 1999

WILLIAM KACZMARCZYK, : DISCRIMINATION PROCEEDING  
Complainant :  
v. : Docket No. PENN 99-154-D  
: WILK CD 99-03  
READING ANTHRACITE COMPANY, :  
Respondent : Ellangowan Refuse Bank #45  
: Mine ID No. 36-02234

## DECISION

Appearances: William Kaczmarczyk, Barnesville, Pennsylvania, *pro se*;  
Martin J. Cerullo, Esq., Cerullo, Datte & Wallbillich, PC,  
Pottsville, Pennsylvania, on behalf of Respondent.

Before: Judge Melick

This case is before me upon the Complaint of William Kaczmarczyk pursuant to Section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, the "Act." Mr. Kaczmarczyk, an applicant for employment with Reading Anthracite Company (RAC), alleges as adverse action under Section 105(c)(1) of the Act, that RAC violated the 1998 Collective Bargaining Agreement (1998 Contract) when it transferred employee Ronald Yarnell into a vacant electrician's position rather than recalling him off the layoff list<sup>1</sup>. More specifically, Kaczmarczyk alleges in his January 7, 1999, complaint as follows:

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<sup>1</sup> Section 105(c)(1) of the Act 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 the 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 is the subject of medical evaluations and potential transfer under a standard published pursuant to section 101 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 the Act.

Reading Anthracite's management discriminated against me by not awarding me a position as an electrician. At this time, I have been laid off from my previous work site (a union mine). Accordingly, Reading Anthracite's management inserted another employee (younger in seniority) ahead of me in the vacant electrical position at another mine site (also a union mine). My qualifications are equal to this employee with less seniority. I should have been awarded this position. Reading Anthracite's management refused to recall me because of my prior involvement in protected activities.

## **Background**

RAC production employees are represented by the United Mine Workers of America (UMWA). The employees belong to local unions with each job site having its own local. RAC also has certain other panel lists of employees with specialized assignments, one of which is the electrical transient crew. Employees on that list enjoy rights on that panel as well as on their "mother" local. The "mother" local is the local at the job site where the employee was first hired by RAC. Seniority at RAC is established by job site, and therefore, also by the corresponding union local. A company-wide multiunit panel list of employees is maintained for those on layoff status. (Complainant's Exhibit No. 2, Article 17(d)).

The Complainant had been an employee of RAC since 1975 but was laid off on November 18, 1998. He had at earlier times held the classification of electrician, but at the time of his layoff was working as a truck driver at the Maple Hill job site under UMWA Local Union 807. Over a period of about six months, mostly the latter half of 1998, RAC had a reduction in work force, losing approximately 100 union workers as well as a number of non-union office personnel. Kaczmarczyk was among those laid off.

On December 31, 1998, John Yurdock resigned his position as an electrician at the New St. Nicholas Breaker (Breaker), which is the job site for Local Union 7891. RAC's General Manager, Frank Derrick filled that job position shortly thereafter (around January 4, 1999) by transferring Ronald Yarnell from his position on the transient crew to the electrician's position at the Breaker. It is undisputed that Yarnell's "mother" local was the Breaker Local, Local Union 7891 (Respondent's Exhibit No. 2). Yarnell was accordingly returning to his "mother" local. According to General Manager Derrick, this action was taken in lieu of laying off Yarnell. There is no dispute that Kaczmarczyk was a member of Local Union 807 at all times relevant hereto and has never been a member of either Local Union 7891 (the Breaker Local) or the transient crew.

## **Evaluation of the Evidence**

Section 11 of the 1964 Supplementary Agreement (Complainant's Exhibit No. 1) provides that seniority at RAC is governed by local union (panel) membership. These provisions were continued and carried forward by virtue of Article 17(a) of the 1998 Contract. Accordingly

company-wide seniority is not observed.<sup>2</sup> Specifically, Section 11 provides that “[s]eniority shall be applied to all mines, surface plant and stripping employees separately, and there shall be no invasion or interference by the employees of one panel by the employees of another.” The arbitration decision, *John Ruschak, Jr., v. Reading Anthracite Company*, Board of Conciliation Grievance No. 8049 (1982), confirms that these provisions in the collective bargaining agreements had also been a long-standing practice (Complainant’s Exhibit No. 3). It was stated therein as follows:

“Traditionally, seniority in the industry has been limited to a single mine or facility and cannot be carried from one local union to another. There may be exceptions by special agreement or practice, but they are not common. The Union has, itself, jealously guarded the separateness of seniority rights, preserving job rights with the facility for employees on the local seniority roster.”

Neither party in this case has cited any exceptions by special agreement or practice. Accordingly, within the framework of the controlling collective bargaining agreements and a binding arbitration decision, it is clear that unless the Complainant was a member of Local 7891, he had no seniority rights within that local to the electrician’s job at issue. Since it is undisputed that the Complainant was not a member of Local Union 7891, he had no seniority rights within that local.

Kaczmarczyk also argued at hearing that the failure by RAC to have posted the electrician’s job was a violation of the 1998 Contract. The 1998 Contract clearly provides however that posting is required only when the company otherwise hires a new employee “from the street,” rather than by filling a position with a present employee. (Article 17 (c)(1), Complainant’s Exhibit No. 2). Even assuming, *arguendo*, that the failure to post the job was a violation, Kaczmarczyk would not in any event have had rights superior to those of Ronald Yarnell. In this regard, Jay Berger, District Board member of the UMWA and testifying on behalf of the Complainant, acknowledged at hearing that, if Yarnell was a member of Local 7891, it was proper to have awarded him the position. Since the evidence in fact establishes that Yarnell remained as a member of Local 7891, the Complainant’s allegations in this regard must also be rejected.

The Complainant in a discrimination case under the Act has the burden of proving his allegations of adverse action. *See Secretary of Labor on behalf of Donald Zecco v. Consolidation Coal Company*, 21 FMSHRC 985, 990 n.5. (September 1999). Here the Complainant has alleged that he suffered adverse action when RAC violated the terms of its collective bargaining agreement in transferring employee Ronald Yarnell into the vacant electrician’s position rather than recalling him off the layoff list. As I have concluded herein,

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<sup>2</sup> An exception not here applicable applies to the multiunit panel. This provision becomes relevant only in the event of a need to recall people from layoff status. It is applicable only when a vacancy is posted to be filled and no one within the local bids on the position. The position is then made available to those on layoff who are on the multiunit list.

RAC did not violate the collective bargaining agreement in this regard. Under the circumstances the Complainant has failed to sustain his burden of proving the adverse action as alleged and accordingly this case must be dismissed.

**ORDER**

Docket No. PENN 99-154-D is hereby dismissed.

Gary Melick  
Administrative Law Judge

Distribution:

William Kaczmarczyk, RR 2, Box 131 DD, Barnesville, PA 18214 (Certified Mail)

Martin J. Cerullo, Esq., Cerullo, Datte & Wallbillich, PC, 450 West Market St.,  
P.O. Box 450, Pottsville, PA 17901 (Certified Mail)

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