

CCASE:
MSHA V. HELEN MINING,
KENTLAND-ELKHORN V. MSHA,
MSHA & SPARKS V. ALLIED CHEMICAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
March 21, 1980

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA).

v. Docket No. PITT 79-11-P

THE HELEN MINING COMPANY

KENTLAND-ELKHORN COAL
CORPORATION

v. Docket No. PIKE 78-399

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

and

UNITED MINE WORKERS OF AMERICA

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

on behalf of
ARNOLD J. SPARKS, JR.,

v. Docket No. WEVA 79-148-D
ALLIED CHEMICAL CORPORATION

ORDER

The UMWA has moved for an order staying the effect of Commission

decisions in these cases pending judicial review and the matter having come before the Commission and the Commission having examined the proofs

and the motion papers and having considered the same, it is Ordered that the motion be and hereby denied.

Backley, Commissioner, concurring:

While agreeing with my colleagues in denying the motion of the UMWA to stay the effect of our decisions in these cases pending judicial review, I believe some discussion of the UMWA's motion and my basis for denial is in order. The UMWA alleges that there is a strong likelihood that it will prevail on the merits on appeal; that its members will be irreparably injured unless a stay is granted; that a stay will not substantially harm other interested parties; and that it would be in the public interest to issue a stay.

The UMWA's claim of irreparable harm to its members is general in nature. The allegations made concern the problems resulting from decreased miner participation in inspections on a nation-wide basis. No part of the UMWA's argument and none of the motion's supporting affidavits speak to the necessity of a stay of the Commission's mandates in the instant cases. Thus, I conclude that there has been no adequate showing of irreparable harm to the UMWA in these cases.

Aside from the inadequacies discussed above, I have serious concern with the nature of the relief that the UMWA has requested. As I read the stay motion and its supporting memorandum, the UMWA does not seek a stay of the Commission's mandate in these particular cases, but instead seeks a stay of the precedential value of the Commission's opinions. This I cannot do. To stay the precedential effect of our decisions would not merely result in the issuance of final Commission decisions contrary to what the Commission has found to be the intent of Congress, but it would be inconsistent with the role assigned to the Commission under the Act. 1/

1/ Section 113, Federal Mine Safety and Health Act of 1977, 30 U.S.C.A. 801 et seq.

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This Commission was established to independently decide questions of law and policy on a uniform, national basis. To temporarily overrule our precedent pending judicial review of our final orders in these three cases would be in derogation of our function. I therefore conclude that, aside from the inadequate showing of irreparable harm in these cases, the UMWA has not established the appropriateness of the relief it seeks.

Richard V. Backley, Commissioner