CCASE:
UMWA V. CONSOLIDATION COAL
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
October 27, 1980

LOCAL UNION 1110, UNITED
MINE WORKERS OF AMERICA (UMWA)
ET AL.

v. Docket No. MORG 76X138

IBMA No. 77-43
CONSOLIDATION COAL COMPANY

DECISION

This discrimination case arises under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. $801 et seq. (1976)(amended 1977). Consolidation Coal Company ("Consol") appeals from the March 26, 1977, decision of former Administrative Law Judge Michels. Judge Michels, after holding an extensive evidentiary hearing, issued a detailed decision finding that Consol had withheld from miners ordinarily conferred benefits in retaliation for their engaging in protected activities. Consol's appeal was pending before the Interior Department's Board of Mine Operations Appeals on the effective date of 30 U.S.C. $961(c)(3) (Supp.III 1979), and is therefore pending before the Commission for disposition. 1/ We affirm.

Consol's arguments furnish no ground for reversal. Consol attacks the judge's finding that the miners notified the Secretary of the Interior, his authorized representative, or Consol of an alleged danger. The judge found that the miners communicated their fears over safety by both words and deeds, and, based on our review of the record, we agree. Consol also objects to the lack of evidence that each of the miners so

1/ This case presents no issue under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $801 et seq. (Supp.III 1979).

complained. We adopt the judge's reasons for rejecting the argument. 2/ Finally, Consol argues that the miners were not entitled to compensation after the union safety committee declared the mine an imminent danger. This objection apparently refers to certain provisions of the collective bargaining agreement between Consol and the UMWA. As we read the judge's opinion, he rested his decision on his finding that benefits ordinarily conferred were withheld in retaliation for the miners' engaging in protected activity, not that the miners were entitled to compensation by their contract. The judge's finding is supported by the record.

Accordingly, the judge's decision is affirmed.

Richard V. Backley, Chairman

Frank F. Jestrab, Commissioner

A. E. Lawson, Commissioner

Marian Pearlman Nease, Commissioner

2/ The judge stated:

> I further recognize that only a few miners communicated any form of safety complaint to their supervisors. It cannot be concluded from this that the other men failed to make a complaint. They all wanted the safety committee brought in and management believed that the whole shift was involved in the action (Tr. 117, 289). In this kind of a situation in which, as the record shows, the word passes around on what has been done, it would be unrealistic to expect each man to make his own individual complaint to his supervisor. The group learns of and supports the action taken by the few. Terry Marvin testified that a majority rule prevails and that if most believe the elevator to be unsafe none will use it (Tr. 257). It may be inferred that the fears and concerns expressed by the applicants who testified were shared by many of the other applicants. Further, by refusing to use the elevator they communicated their agreement to call the safety committee and their belief that the elevator was unsafe. It is noted on this point the parties stipulated that some of the applicants requested the presence of their safety committee. However, the parties also stipulated

that the testimony of applicants' witnesses "shall be used and considered on behalf of each individual applicant without the necessity of each individual applicant's testifying."

(Stipulation of Facts Nos. 4 and 6).

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