CCASE:
UMWA V. PEABODY COAL
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FMSHRC-WDC
SEP 30, 1985
United MINE WORKERS
OF AMERICA (UMWA)
on behalf of JAMES ROWE, et al., Docket Nos. KENT 82-103-D
JERRY D. MOORE, LARRY D. KENT 82-105-D
KESSINGER KENT 82-106-D
v.
PEABODY COAL COMPANY

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
on behalf of THOMAS L.
WILLIAMS Docket No. LAKE 83-69-D
v.
PEABODY COAL COMPANY

Before: Backley, Acting Chairman; Lastowka and Nelson, Commissioners

DECISION

BY THE COMMISSION:

These consolidated discrimination complaints arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (1982). The essential issue presented on review is whether Peabody Coal Company ("Peabody") violated section 105(c) of the Mine Act, 30 U.S.C. $ 815(c), when it bypassed for rehire the laid-off complainants, who were otherwise eligible for recall under pertinent collective bargaining agreement provisions, because they had not obtained relevant health and safety training specified in section 115 of the Act, 30 U.S.C. $ 825, and 30 C.F.R. Part 48. 1/ The Commission's Chief Administrative Law Judge concluded that,

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1/ Section 115 states in part:

(a) Approved program; regulations

Each operator of a coal or other mine shall have a health and safety training program which shall be approved by the Secretary. The Secretary shall promulgate regulations with respect to such health and safety training programs not more than 180 days after the effective date of the Federal Mine Safety and Health Amendments Act of 1977. Each training

program approved by the Secretary shall provide as a minimum that --
(Footnote 1 continued)
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under the circumstances presented, certain of the complainants on layoff status were "miners" within the meaning of the Mine Act and that Peabody

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Footnote 1/ continued
(1) new miners having no underground mining experience shall receive no less than 40 hours of training if they are to work underground. Such training shall include instruction in the statutory rights of miners and their representatives under this [Act], use of the self-rescue device and use of respiratory devices, hazard recognition, escapeways, walk around training, emergency procedures, basic ventilation, basic roof control, electrical hazards, first aid, and the health and safety aspects of the task to which he will be assigned;
(2) new miners having no surface mining experience shall receive no less than 24 hours of training if they are to work on the surface. Such training shall include instruction in the statutory rights of miners and their representatives under this [Act], use of the self-rescue device where appropriate and use of respiratory devices where appropriate, hazard recognition, emergency procedures, electrical hazards, first aid, walk around training and the health and safety aspects of the task to which he will be assigned;
(3) all miners shall receive no less than eight hours of refresher training no less frequently than once each 12 months, except that miners already employed on the effective date of the Federal Mine Safety and Health Amendments Act of 1977 shall receive this refresher training no more than 90 days after the date of approval of the training plan required by this section;
(4) any miner who is reassigned to a new task in which he has had no previous work experience shall receive training in accordance with a training plan approved by the Secretary under this subsection in the safety and health aspects specific to that task prior

to performing that task;
(5) any training required by paragraphs (1), (2) or (4) shall include a period of training as closely related as is practicable to the work in which the miner is to be engaged.
(Footnote 1 continued)
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discriminated against them in contravention of section 105(c) of the Act by violating their section 115 training rights. 6 FMSHRC 1634, 1645-49 (July 1984)(ALJ). We disagree. For the reasons that follow, we reverse.
These cases involve four discrimination complaints. Docket No. LAKE 83-69-D is a complaint of discrimination filed by the Secretary of Labor on behalf of Thomas L. Williams, who was on layoff and who had worked previously as a miner for Peabody at its Sunnyhill No. 9 South Mine. Docket Nos. KENT 82-105-D and KENT 82-106-D are complaints brought by the United Mine Workers' of America ("UMWA") under section 105(c)(3) of the Mine Act, 30 U.S.C. $ 815(c)(3), on behalf of Jerry D. Moore and Larry D. Kessinger, who were also on layoff and who had been employed formerly as miners by Peabody at its Eagle No. 2 Mine. (The Sunnyhill No. 9 South and the Eagle No. 2 Mines are part of Peabody's Eastern Division.) Finally, Docket No. KENT 82-103-D is a complaint of discrimination filed by the UMWA as a class action on behalf of James Rowe and all laid-off individuals employed previously as miners in Peabody's Eastern Division.
Prior to July 1981 and the events which gave rise to this litigation, Peabody provided to its miners, following their rehire from layoff status, the training required for "new miners" under the Mine Act and the Secretary of Labor's implementing regulations. On July 6, 1981, however, Peabody instituted a new policy requiring laid-off individuals to obtain such training on their own. Under the new policy, those laid-off individuals who failed to obtain the training would be bypassed, when reached on a recall panel, in favor of panel members whose training was current. The recall panels were established as part of the National Bituminous Coal Wage Agreement of 1981 ("the Agreement"), to which Peabody and the UMWA were parties. Article XVII(d) of the Agreement provided:
Employees who are idle because of a reduction in the working force shall be placed on a panel from which they shall be returned to employment on the basis of

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Footnote 1/ end
(b) Training compensation

Any health and safety training provided under subsection (a) of this section shall be provided during normal working hours. Miners shall be paid at their normal rate of compensation while they take such training, and new miners shall be paid at their starting wage rate when they take the new miner training. If such training shall be given at a location other than the normal place of work, miners shall also be compensated for the additional costs they may incur in attending such training sessions.
30 U.S.C. $ 825.
30 C.F.R. Part 48 implements section 115 of the Act. Part 48 sets forth the training requirements for miners, as well as the requirements for the compensation of miners for training and retraining.
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seniority as outlined in section (a). A panel member shall be considered for every job which he has listed on his layoff form as one to which he wishes to be recalled.
"Seniority" was defined in Article XVII(a) of the Agreement as "length of service and ability to step into and perform the work of the job at the time the job is awarded." Under Peabody's new policy, a laid-off individual who had not obtained the relevant health and safety training when he was reached for a vacant position was considered unable to "step into and perform the work of the job" at the time the job was awarded.
On January 3, 1983, the Department of Labor's Mine Safety and Health Administration ("MSHA") notified Peabody that it considered the new recall policy inconsistent with the training requirements of the Mine Act and 30 C.F.R. Part 48. Subsequently, MSHA revoked approval of the training plans in effect at two of Peabody's mines and cited Peabody for violating the Act and 30 C.F.R. Part 48. Peabody then discontinued its policy and returned to its prior practice of recalling the most senior individual on the recall panel and providing training upon rehire. After the citations were terminated, those individuals who, as a result of Peabody's policy, had obtained training on their own time and expense and had been recalled to work, were compensated by Peabody for their training expenses.
The named complainants in the present discrimination complaints had worked previously as underground miners and had sought recall at Peabody's surface facilities. They had not obtained the surface "new miner" training and, under Peabody's policy, had been bypassed when reached on the recall panel. The

complainants alleged that it was Peabody's responsibility to provide training after rehire and that, by denying reemployment because they were not trained, Peabody engaged in discrimination in violation of section 105(c)(1) of the Act. 2/

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2/ Section 105(c)(1) provides:

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

(Footnote 2 continued)

In his decision, the judge agreed with the named complainants. 3/ The judge found that section 115 of the Mine Act establishes the right of miners to receive health and safety training and the corresponding obligation of the operator to provide and pay for the training. Because the Mine Act and its legislative history do not address the situation of individuals on layoff, the judge took account of relevant provisions of the parties' Agreement dealing with laid-off individuals. He concluded that, %n light of the Agreement, a laid-off individual was more than just s "preferred job applicant":

[T]he rights accorded a laid off miner under the collective bargaining Agreement contain indicia of an ongoing employment relationship sufficient for him to be considered s miner within the purview of section 115 and 105(c) of the Act.

6 FMSHRC at 1648.

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Footnote 2 continued

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] of this [Act] 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 this [Act].

30 U.S.C. $ 815(c)(1).

3/ In the litigation before the judge, the complainants were divided into three categories: Category I consists of those individuals who had obtained training on their own time and at their own expense, and who were recalled to work. Peabody and the UMWA settled the claims of these miners with the approval of the judge. Category II complainants, the named complainants, are those individuals who were bypassed on the recall panel because the operator determined that they would need additional training in order to fill the available jobs. Category III, covered by the class action in Docket No. KENT 82-103-D, consists of those individuals who, as a result of the operator's policy, had obtained training on their own time and at their own expense, but whose names were not reached on the recall panel because of their relatively shorter length of service.

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Therefore, according to the judge, a laid-off "miner" is entitled to the protections afforded all "miners" under sections 115 and 105(c) of the Mine Act, including the right to receive training from the operator. The judge ordered Peabody to reinstate the named complainants to the jobs that they would have had but for the discriminatory training policy. In Docket No. KENT 82=103-D, the judge dismissed the complaint on the grounds that the UMWA had failed to satisfy requisite criteria for maintaining a class action. With regard to the Category III complainants, the judge found that the right to a job was predicated upon being reached on the recall panel. Therefore, because the Category III complainants had no right to a job, the judge held that they had no right to training. 6 FMSHRC at 1649. Given our disposition of this case, we agree in result with the judge as to the claims of any individual in Category III. Subsequently, the judge awarded damages and attorney's fees, and assessed civil penalties for the violations of section 105(c). 6 FMSHRC 1920 (August 1984)(ALJ).

In Secretary of Labor, on behalf of Bennett, et al. v. Emery Mining Corp., 5 FMSHRC 1391 (August 1983), pet. for review filed, No. 83-2017 (lOth Cir. August 17, 1983), the Commission examined the rights granted and the obligations imposed by section 115. The Commission found that section 115 affords newly hired miners

two separate, related rights: the right to receive after hire the safety training specified in that provision and the right to be compensated for such training. 5 FMSHRC at 1394-96. As a corollary to these rights, the Commission further concluded that section 115 imposes upon operators the duty to provide new miners with the required training. Id. The Commission determined also that section 105(c) prohibits denial of, or interference with, these rights. 5 FMSHRC at 1395-96.

In Emery, the operator had refused to hire job applicants who had not obtained the health and safety training specified in section 115 on their own time and at their own expense. The operator also refused to r+imburse those whom it hired for their expenses in obtaining such training. The Commission found that Emery's policy requiring job applicants to obtain training on their own, as a qualification for employment, did not violate section 105(c) of the Act. The Commission held, however, that Emery's failure to reimburse those whom it subsequently hired for their prehire training expenses while relying on that training to satisfy its own statutory obligation to provide training for new miners, violated the Act. 5 FMSHRC at 1396. Central to the holding in Emery was the recognition that section 115 neither dictates whom an operator should hire, nor refers to qualifications for hire. As stated in Emery, "[I]n the Mine Act Congress did not restrict a mine operator's prerogative of setting pre-employment qualifications based on experience or training." 5 FMSHRC at 1395-96. On the+ other hand, it was recognized that the operator's statutory obligation to provide and bear the cost of training for new miners could not be circumvented by relying on newly hired miners' prehire training, obtained as a result of that operator's hiring policies, while refusing to reimburse new miners for the expense of such training.

In the present case, the complainants are individuals who have been laid off by Peabody and who worked previously for the operator as miners.

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The parties agree that the layoffs resulted from bona fide business objectives. There is no suggestion that Peabody's motivation for the layoffs was retaliatory. Peabody's policy with respect to hiring laid-off individuals was similar to Emery's policy with respect to hiring new job applicants. Both operators conditioned employment upon the prospective employee first acquiring his own training. However, unlike Emery, Peabody reimbursed the employees it hired for the expense of the training.

We conclude that Peabody's policy requiring laid-off individuals to obtain training prior to rehire does not violate the Act. 4/ As the judge noted, the Act and its legislative history do not address the rights of laid-off individuals or the obligations of operators with regard to the recall of laid-off individuals. Section 115 contains no priorities with respect to the recall of former employees. Moreover, nothing in the legislative history indicates that Congress intended section 115 to dictate to operators whom they must recall--any more than it dictates whom they must hire.

Section 115 grants training rights to "new miners" and "miners." We conclude that, consistent with the rationale underlying Emery, under the Mine Act it is upon being rehired that laid-off individuals become entitled to the rights granted by section 115. At that point they once again become "miners" within the meaning of section 115 and as defined by section 3(g) of the Act. 5/ There being no statutory right to training for those on layoff status, refusal to rehire for lack of required training does not violate section 105(c). This result is consonant with the holding in Emery. 6/

Our holding does not mean that an operator is without obligations regarding the training of previously laid-off individuals after they have been rehired. As in Emery, we conclude that section 115 requires

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4/ Our decision is consistent with the administrative law judges' decisions in United Mine Workers of America, on behalf of Delmar Shepard v. Peabody Coal Company, 4 FMSHRC 1338 (July 1982)(ALJ) and Secretary of Labor,(MSHA) on behalf of I.B. Acton et al. and UMWA v. Jim Walter Resources, Inc , 6 FMSHRC 2450 (October 1984)(ALJ).

5/ Section 3(g) of the Act provides:

For the purpose of this Act, the term --

* * *

"miner" means any individual working in a coal or other mine....

30 U.S.C. $ 802(g).

6/ Our decision is based on the statute. There is no relevant training regulation bearing directly on the issue, for none of the Secretary's otherwise extensive safety training regulations at 30 C.F.R. Part 48 addresses the subject of laid-off individuals. Cf. Emery , 5 FMSHRC at 1398.

~1364 that an operator, if it relies upon the prehire training of those whom it rehires to satisfy its statutory training obligations with respect to "new miners," must reimburse the miners for the

expense of their training. Failure to do so would circumvent the intent and mandate of section 115(b) that operators provide and pay for new miners' training. In the present case, Peabody has fulfilled this obligation.

Underlying our holding is our belief that the Mine Act is not an employment statute. The Act's concerns are the health and the safety of the nation's miners. In enacting • 115 Congress was intent upon preventing "the presence of miners ... in a dangerous mine environment who have not had ... training in self preservation and safety practices." S. Rep. No. 181, 95th Cong., 1st Sess. 50 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 637-38 (1978)("Legis. Hist."). Those individuals employed at a mine are to be trained before they begin work so that once they begin work accidents are less likely to occur. See National Indus. Sand Ass'n v. Marshall, 601 F.2d 689, 710 (3d Cir. 1979). Peabody's policy of hiring individuals who have maintained their trained status is consistent with this objective and with section 115 as written.

The ALJ looked beyond the Mine Act to the parties' private collective bargaining agreement in order to interpret section 115. We are not prepared to interpret the rights and obligations mandated by the.Act through interpretation of a private contractual agreement unless required to do so by the Act itself. See Local Union No. 781, Dist. 17, UMWA v. Eastern Assoc. Coal Corp., 3 FMSHRC 1175, 1179 (May 1981). Here, nothing mandates that we go beyond the Act and the legislative history to determine whether laid-off individuals are entitled to • 115 safety training. The rights of laid-off individuals to recall and the extent to which an operator agrees to limit its right to select the persons it will recall, are the province of collective bargaining and arbitration. Essentially, the dispute between Peabody and the complainants is of a private, contractual nature. The issues raised in such a dispute are appropriately resolved by the grievance-arbitration process. See Local Union 5869, District 17, United Mine Workers of America v. Youngstown Mines Corp., 1 FMSHRC 990, 994 (August 1979). Indeed, prior to this matter reaching the Commission, the issue of the validity of Peabody's recall policy under the applicable bargaining agreement was arbitrated several times, and Peabody's policy was upheld. 7/ We recognize that under the National Labor Relations Act and the Railway Labor Act, statutes governing labor-management relations, laid-off employees in general and laid-off employees with a right to reinstatement based upon seniority have been held

to be entitled to certain rights granted by those acts. See, e.g., Kustom Electronics, Inc. v. NLRB, 590 F.2d 817, 821-22 (lOth Cir. 1978); Nashville, C.& St. L. Ry. v. Railway Employees' Department of American Federation of Labor, 93 F.2d 340, 343-44 (6th Cir. 1937). For example, the courts have found laid-off employees' interest in negotiations affecting wages, hours, and other conditions of employment

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7/ See e.g , Peabody Coal Co. and UMWA, District 23, Local Union 9800, ARB No. 78-23-81-274, at 5-6 (March 17, 1981); Peabody Coal Co. and UMWA, District 6, Local Union 1340, ARB. No. 81-6-83-637, at 17-20 (March 29, 1983).

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to be such that the laid-off employees are entitled to participate in bargaining unit representation elections. However, these cases arise under statutes whose very purpose is the governance of labor-management relations. The cited cases deal with rights central to that purpose--participation in the collective bargaining process. The entirely discrete purpose of the Mine Act, and the nature of the rights granted by section 115, prevent us from transferring this reasoning to the Mine Act.

On the bases explained above, we reverse the conclusion of the administrative law judge that Peabody discriminated against the named complainants in.Docket Nos. KENT 82-105-D, KENT 82-106-D, and LAKE 83-69-D, by violating their asserted statutory rights with regard to training, and we dismiss the complaints. Because we conclude that Peabody's policy of bypassing laid-off individuals whose training was not current does not contravene the Act, we affirm the judge's dismissal of the complaint in Docket No. KENT 82-103-D without reaching the question of whether the judge properly concluded that the UMWA had failed to meet certain requisites for a valid class action. Finally, the judge's order awarding damages and attorney's fees, and assessing civil penalties is vacated. 8/

Richard V. Backley, Acting Chairman
James A. Lastowka, Commissioner
L. Clair Nelson, Commissioner

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8/ Pursuant to section 113(c) of the Mine Act, 30 U.S.C. $ 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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