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MSHA V. PONTIKI COAL
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MAY 27, 1986

SECRETARY OF LABOR,	Docket Nos. KENT 83-181-R
MINE SAFETY AND HEALTH	KENT 83-182-R
ADMINISTRATION (MSHA)	KENT 83-183-R
	KENT 83-184-R
	KENT 83-256
v.	KENT 83-262
PONTIKI COAL CORPORATION	

BEFORE: Backley, Doyle, Lastowka and Nelson, Commissioners
DECISION
BY THE COMMISSION:
In this consolidated contest and penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq (1982), the Commission granted the Secretary of Labor's petition for discretionary review of a decision by Commission Administrative Law Judge Joseph B. Kennedy. 1/ The judge's decision, reported at 6 FMSHRC 781 (March 1984)(ALJ), confirms a prior bench decision in which he granted a joint motion to approve a settlement. The issue presented is whether the judge abused his authority through the manner in which he addressed the settlement agreement and the circumstances surrounding the issuance of the pertinent citation and orders of withdrawal. For the reasons that follow, we conclude that the judge's decision goes beyond the record, includes comments lacking record support, and constitutes a serious abuse of authority. Accordingly, we strike the judge's objectionable comments and affirm his settlement approval on the narrow grounds on which it properly rests.
I.
Factual Background
Pontiki Coal Corporation ("Pontiki"), a subsidiary of Mapco, Inc., operates Mine Number Two, an underground coal mine located in Martin

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1/ The Commission is an independent adjudicatory agency established by Congress to resolve legal disputes under the Mine Act. 30 U.S.C. $ 823. The Commission is not a part of and is no way connected with the Department of Labor. Rather, the Department of Labor appears before the Commission as a party to litigation under the Mine Act.

County, Kentucky..2/ On February 28, 1983, an inspection team from the Department of Labor's Mine Safety and Health Administration ("MSHA") arrived at the mine in order to conduct respirable dust and ventilation spot inspections. An MSHA inspector was assigned to check ventilation levels at several main intake/return locations. This inspector's notes reflect that, prior to their going underground, Pontiki's mine foreman could not produce any record books concerning recent preshift/onshift conveyor belt examinations. From the bottom of the slope outby for a distance of approximately 100 feet, the inspector observed the presence of loose coal, coal dust, and float coal dust in the slope conveyor belt entry. The inspector noted that among other things, the material had accumulated on top of the conveyor belt pan to a depth of up to 12 inches surrounding the upper belt in many places. The conveyor belt was operating at the time. The inspector also noted several other violative conditions in the area, including a damaged walkway and handrail and a conveyor belt discharge roller not provided with a guard.

The inspection party did not proceed inby the No. 1 conveyor belt air locks, but instead rode a mantrip down the track entry, past the No. 4 conveyor belt, to an extension of the No. 1 conveyor belt. The inspector's notes reflect several ventilation readings and calculations for air flow in that vicinity. His notes show the presence of an impermissible sump pump in a return air course and the lack of a check-in/check-out system for supervisory personnel at the mine. The inspector's notes also show that Pontiki cleaned up the accumulation on the slope conveyor belt.

As a result of his observations, the inspector issued several section 104(a) citations to Pontiki for the violative conditions that he encountered, and held a close-out conference with mine officials. He designated the accumulation violation as significant and substantial, but noted that the accumulation appeared to be spillage and that there was "[v]ery little that management can do about intermittent spillage." The inspector specified 8:30 a.m. on March 1, 1983, the next day, as the "Termination Due" date on the citation for failure to record preshift/ onshift conveyor belt examinations.

After being issued the recordkeeping citation, the two most senior Pontiki supervisors present in the mine that day walked along the conveyor belt lines and filled out an onshift examination report. According to counsel for Pontiki, the report revealed conveyor belt rollers in need of repair and accumulations of coal dust and float coal dust on the No. l and No. 4 conveyor belts. Based on their report, which was filed at

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2/ The factual background presented in this decision is derived from the transcript of the prehearing/settlement conference held before the administrative law judge on February 7, 1984, and the responses of the parties to the judge's pre-trial orders of September 7, 1983, and January 10, 1984. No evidentiary hearing was conducted. After the Commission directed this matter for review, several unauthorized documents were struck from the official record. 6 FMSHRC 1131 (May 1984). Those documents have not been considered in deciding this case.

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the end of the daytime production shift on February 28, the mine supervisor and mine foreman halted production at the mine.

The following day, March 1, 1983, the mine foreman told employees that there would be no production at the mine that day. He directed several of them to clean accumulations from around the No. 1 and No. 4 conveyor belts, change old rollers, replace bottom rollers, and rock dust the areas following cleanup operations.

At approximately 10:00 a.m. that same day, an MSHA inspection party returned to the mine and proceeded to walk along the idled No. 1 conveyor belt. Once past the conveyor belt air locks, they observed accumulations of loose coal, coal dust, and float coal dust ranging in depths of up to 40 inches. These conditions existed, in varying degrees, along the 2,000-foot course of the No. 1 conveyor belt. In several places, the coal and coal dust had accumulated until it covered the bottom rollers and touched the bottom belt. The material ranged from very dry to only slightly moist. The inspector issued Citation No. 2052746, a section 104(d)(1) citation, alleging a violation of 30 C.F.R. $ 75.400, as a result of observing these conditions.

At the same location, the inspector noticed 52 damaged conveyor belt rollers, numerous places where the conveyor belt rubbed against the roller bracket to the extent that from 1/4 - to 1/2 - inch of the bracket had been worn away, and the bottom belt lying on the accumulated material at several locations (in one instance for a distance of 48 feet). The inspector issued Order No. 2052747, a section 104(d)(1) order of withdrawal, alleging a violation of 30 C.F.R. $ 75.1725, based on the unsafe condition of this conveyor belt.

A Pontiki safety inspector asked whether the MSHA inspectors could issue a section 107(a) imminent danger order of withdrawal instead of initiating the section 104(d)(1) "chain." An MSHA inspector replied that the conditions encountered were significant and substantial violations resulting from an unwarrantable failure to comply with applicable standards, but that there was no immediate source of ignition for the float coal dust. The MSHA inspectors'

notes quote the safety inspector as responding, "'We start the belts if that's what it takes to get a 107(a) order issued." The MSHA inspectors informed him that the conveyor belt was already under a withdrawal order.

The MSHA inspectors issued another section 104(d)(1) order of withdrawal, Order No. 2052748, alleging a violation of 30 C.F.R. $ 75.404, for lack of any evidence of preshift/onshift conveyor belt examinations. 3/

3/ In a subsequent modification of this order issued on March 8, 1983, it was noted that some earlier dates and initials were found in the No. 1 conveyor belt entry, but that no evidence could be found to indicate that examinations were conducted between February 3 and February 27, 1983. According to the inspector, 11 to 13 production shifts were worked during that period as evidenced by Pontiki's preshift/onshift record books for the two working sections involved.

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The inspection party proceeded to walk along the idled No. 4 conveyor belt. From the No. 4 conveyor belt drive inby for a distance of 3,800 feet they observed accumulations of loose coal, coal dust, and float coal dust ranging in depths of up to four inches. There were numerous piles of such material up to 12 inches in depth. The material ranged from wet to very dry. As a result of observing these conditions, the inspectors issued a third section 104(d)(1) order of withdrawal, Order No. 2052750, alleging another violation of 30 C.F.R. $ 75.400.

The inspectors' notes of the close-out conference conducted that day reflect that Dennis Jackson, Pontiki's Vice President for Operations, stated that the inspectors "were being unfair to the company." The notes quote Jackson as stating that "he felt [the inspectors] had 'double-barrelled' them..." The inspector who wrote this note surmised that Jackson's feelings "were in reference to the citation on records of belt examinations [and] citations and orders written on conditions found in the beltline." Jackson abruptly left the conference, and the inspectors "felt that it was best to leave at this time."

II.

Procedural History

Of the citations and orders issued during the two days of inspection, Pontiki contested only the one citation and three orders of withdrawal issued on March 1, 1983. The subsequently consolidated contest and penalty proceeding was assigned to Judge Kennedy. MSHA's Office of Assessments proposed penalties of $2,294 for the four alleged violations. The parties submitted extensive information in response to the judge's pretrial orders of September 7,

1983, and January 10, 1984.

On February 7, 1984,.the parties appeared before the judge for a prehearing/settlement conference. As a basis for settlement, counsel for the Secretary of Labor offered to reduce the penalties proposed to $1,900 for Pontiki's admission of the violations as written, while Pontiki offered to admit to violations but not to the section 104(d)(1) "special findings." The judge found neither offer acceptable. At the conclusion of the conference, the parties agreed to a settlement agreement proposed by the judge. He issued a bench decision approving the settlement agreement. 4/

The written decision of March 30, 1984, confirms the prior bench decision. Under the terms of the settlement agreement, Pontiki agreed to pay a civil penalty of $7,500 to be allocated among the four violations as the judge deemed appropriate. Tr. 59; 6 FMSHRC at 786. (The judge suggested that he had "remitted" $3,000 from a previously suggested penalty of $10.500 in exchange for a letter from the operator admonishing the responsible individuals. Id Tr. 58-60).

4/ In his PDR, the Secretary seems to suggest that the parties may not actually have "moved" for such a settlement. However, the Secretary trial counsel not only made no objection to the "settlement" terms as described by the judge, he indicated that the judge's recitation of the "settlement" was "agreeable" Tr. 59-60.

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In addition to recapitulating the settlement terms, however, the judge's decision also set forth an extended discussion of his view of the "facts" surrounding the issuance of the citation and orders of withdrawal. The judge stated that because the MSHA inspectors had "noted" Pontiki's failure to record the results of preshift/onshift conveyor belt examinations on February 28, 1983, "this should have alerted them to conduct a physical examination of these areas." 6 FMSHRC at 782. The judge termed the inspection sequence employed a "dereliction" because, by only inspecting near the slope bottom before proceeding down the track entry on a personnel carrier, the inspectors failed to observe or cite Pontiki for "enormous" accumulations of combustible material. Id.

The judge declared:

> The record strongly suggests that the reason the inspectors were "persuaded" to tour around the main beltline and ignore the "message" of the omitted preshift and onshift reports was to permit the operator to run coal for one more shift and management to" voluntarily" idle the mine and begin cleanup operations. Indeed, the record shows that in return for the "advance notice" of the "spot"

inspection that did not begin in earnest until March 1, 1983, the operator idled its production at 3:30 p.m. on Monday, February 28 and began cleanup. The record also shows that in return for the operator's "cooperation" the inspectors expected to issue only 104(a) citations but were so appalled by the conditions actually encountered they felt compelled to issue unwarrantable failure citations and closure orders.

6 FMSHRC at 783 (footnote omitted). The judge further asserted that at the time the MSHA inspectors issued the section 104(d)(1) citation on March 1, they were "no longer willing to turn a blind eye to the conditions encountered." 6 FMSHRC at 783 n. 2. He stated that as a result of this action, "the operator's vice president for operations ... felt he had been double crossed or 'double barrelled' as he put it." 6 FMSHRC at 783.

The judge was critical of MSHA, in that the agency had declined to specially assess the violations or refer them for a determination of whether "knowing" or "willful" violations had been committed. 6 FMSHRC at 784-85. He condemned MSHA for its "cheaper by the dozen" policy of lumping multiple discrete violations into one citation and three orders of withdrawal and for the fact that the Solicitor had offered to "reward" Pontiki for challenging the violations by "discount[ing]" his proposed penalties. 6 FMSHRC at 784. The judge likened MSHA's lack of oversight of the Pikeville and Paintsville district offices to the type of "callous indifference and dereliction" at Pikeville that led to the 1976 Scotia Mine disaster in which 26 people had lost their lives. 6 FMSHRC at 784-85.

Warming to his theme, the judge stated:

> The true circumstances surrounding the truncated inspection of the beltline on February 28 cry out for investigation and explanation. The public is entitled to know what occurred on that date that later led the operator's vice president for operations to feel he had been "spun" or "double barreled" by MSHA. Was there a hidden quid pro quo for the abbreviated inspection of the beltline on February 28, and, if so, what was it? Was the abbreviated inspection of the beltline designed to alert the operator to the real inspection that commenced the next day? Or was MSHA innocent to the point of naivete? And, if so, what is the public to conclude about MSHA's capacity to serve as a sophisticated enforcement agency? I believe these and other questions deserve an answer.

6 FMSHRC at 785.

The judge recommended "that this matter be referred to the inspector general of the Department of Labor for a full and true disclosure of the facts relating to MSHA's failure to inspect the beltlines in question on February 28, 1983." 6 FMSHRC at 785. He also recommended "that this case be referred to the MSHA's office of special investigations for a determination of liability on the part of the operator or any [of] its employees under sections 110(c) and/or (d) of the Act." Id. The judge stated that he had "probable cause to believe" that Jackson knew of the existence of the violative conditions and of their gravity prior to February 28, 1985. Id. He stated, "[I]ronically, [this] is the same individual whom counsel represented would take disciplinary action against the mine foreman allegedly responsible for the violation" and, if he did so, "it must have been done with tongue-in-cheek." Id.

In closing, the judge ordered the settlement agreement approved, allocated the $7,500 in civil penalties equally among the four violations, and ordered the Commission to take such action as it deemed appropriate to refer the matter to the Assistant Secretary of Labor for Mine Safety and Health in order to initiate the two investigations that he felt were justified on the above facts. 6 FMSHRC at 786.

On May 8, 1984, the Commission granted the Secretary's petition for discretionary review. According to that pleading, the Secretary took the "unusual step" of petitioning the Commission for review of a decision approving a settlement "because of the egregious nature of many statements contained in that opinion and the fact that the integrity of certain individuals has been unfairly maligned." Sec. PDR and Br. at 5. The Commission granted the Secretary's petition and, as a result of "the serious allegations of possible criminal misconduct by federal employees and officials" contained in the judge's submissions, the Commission, sua sponte, also referred the matter to the Department of Justice for "appropriate action." Letter to the Attorney General from the Commission's

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General Counsel dated May 18, 1984. Pending a resolution of its referral, the Commission deferred any further action in this case. It was on this ground that the Commission subsequently denied the Secretary's motion for expedition of his appeal. Commission Order dated June 18, 1985. After directing the case for review and making its referral to the Department of Justice, the Commission struck a number of documents from the official record. 6 FMSHRC 1131 (May 1984). The Commission also struck, as not being part of the record before the judge, the affidavit and memorandum attached to the Secretary's petition for discretionary review. Id.

The Public Integrity Section of the Department of Justice's

Criminal Division responded conclusively to the Commission's investigative referral by letter dated May 2, 1986. The letter states that the "allegations made by Administrative Law Judge Joseph Kennedy about possible bribery or the giving of advance notice of mine inspections by [MSHA] inspectors" were subjected to a "limited inquiry to determine whether sufficient evidence existed to initiate a full investigation...." The letter concludes, "Based upon the results of that inquiry, we decided that further criminal investigation is not warranted, and we have closed the matter as to the allegations of bribery and advance notice."

III.

Disposition

The Secretary argues that the judge abused his authority by addressing in his published decision matters far beyond the scope of the proceeding below, making numerous statements and findings unsupported by any evidence, and venturing comments that are defamatory, derogatory, and inappropriate. Relying on the Commission's decision in Inverness Mining Co., 5 FMSHRC 1384 (August 1983), the Secretary requests that most of the text of the judge's decision be stricken.

Settlement of contested issues is an integral part of dispute resolution under the Mine Act. Section 110(k) of the Act provides that no contested proposed penalty "shall be compromised mitigated, or settled except with the approval of the Commission. 30 U.S.C. $ 820(k). See also Commission Procedural Rule 30, 29 C.F.R. $ 2700.30. In Knox County Stone Co., Inc. 3 FMSHRC 2478 (November 1981), the Commission described some of the outer boundaries" of the authority its judges possess in settlement adjudication. While noting that a judge's over-sight of the settlement process is an adjudicative function that involves wide discretion, the Commission observed that the scope of that discretion is not unlimited. 3 FMSHRC at 2479. The Commission stated:

Rejections [of settlement], as well as approvals, should be based on principled reasons. Therefore, we [have] held that if a judge's settlement approval or rejection is "fully supported" by the record before him, is consistent with the statutory penalty criteria, and is not otherwise

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improper, it will not be disturbed. In reviewing such cases, abuses of discretion or plain errors are not immune from reversal.

3 FMSHRC at 2480 (citations omitted).

The Commission previously has warned Judge Kennedy not to indulge in settlement "approval" decisions roaming far beyond the

limited records typically involved in the settlement process. Inverness Mining, supra, 5 FMSHRC at 1388-89. As the Commission has stated repeatedly, if a judge disagrees with a stipulated penalty amount or believes that any questionable matters bearing on the violation or appropriate penalty amount need to be clarified through trial, he is free to reject the settlement and direct the matter for hearing. Knox County, supra, 3 FMSHRC at 2481-82; Tazco, Inc., 3 FMSHRC 1895, 1898 (August 1981). The process followed by Judge Kennedy in the present case violated these well-established principles.

At the close of the prehearing/settlement conference -- during which, we emphasize, no evidentiary testimony had been developed -- Judge Kennedy issued a bench decision approving the settlement agreed to by the parties. Tr. 59-60. According to the terms of that oral agreement, as related by Judge Kennedy on the record, the only issues disposed of were those contested by the parties -- namely, the violations reflected in the citation and orders of withdrawal, the appropriate civil penalty, and the "letter of admonition" required by the judge before he would approve the settlement agreement. At this stage of the proceedings, it should have been clear to Judge Kennedy that his written decision would be limited in scope by the abbreviated dispute resolution mechanism employed by the parties and approved by him. Instead, his subsequent written decision addressed numerous matters beyond the scope of the parties' settlement agreement and the scant -- and untried -- record in this matter.

The pre-trial submissions offered in this proceeding, upon which the judge's decision purports to rest, were made in response to the judge's pre-trial orders. Not only do they lack the evidentiary character of testimony and evidence offered at a hearing and subjected to the crucible of cross-examination and trial, they also do not provide support for any of those portions of the decision sought to be stricken by the Secretary. The limited nature of these submissions reinforced the need for the judge to limit himself to the confines of the issues resolved, or fairly touched on, by the mutual consent of the parties. Inverness Mining, 5 FMSHRC at 1388. Cf. ABC Air Freight Co. v. CAB, 391 F.2d 295, 305 (2d Cir. 1968), cert. denied, 397 U.S. 1006 (1970).

We proceed to examine the judge's various objected-to pronouncements seriatim. We find all of them lacking in record support.

A. Improper advance notice

The record reveals that during the inspection conducted on February 28, 1983, an MSHA inspector issued a citation for failure to record preshift/ onshift conveyor belt examinations. On the face of the citation, the

inspector specified 8:30 a.m., the next day, March 1, 1983, as the "Termination Due" date for the record-keeping citation. The establishment of a specific due date for abatement is a statutory requirement of the Mine Act. 30 U.S.C. $ 814(a). To construe such a legal requirement as an improper "advance notice" that an inspection will be conducted at that time defies reason.

Among other things, the purpose of a specific abatement due date is to put the operator on notice as to when the enforcement authority requires the alleged violation to be corrected. Therefore, it is logical for an operator to assume that a further inspection may be conducted on or shortly after that date to ascertain that the condition, in fact, has been corrected. Moreover, the statements of Pontiki's counsel in response to the judge's questioning on this issue provide no basis for a finding of advance notice. Tr. 54-55. Absent anything more in the record to support his assertion, we conclude that the judge's insinuations of improper advance notice lack support in the present record. Cf. Inverness Mining, 5 FMSHRC at 1388.

B. Bribery

Judge Kennedy queried whether there was "a hidden quid pro quo for the abbreviated inspection of the beltline on February 28." 6 FMSHRC at 785. He also asked what had led Dennis Jackson, Pontiki's Vice President of Operations, to feel that he had been "'spun," "double crossed or 'double barrelled' as he put it." 6 FMSHRC at 783, 785. The tone of these "queries," which relate to possible criminal conduct, renders the judge's statements as declarative as they are interrogative in nature. The Secretary argues that the judge incorrectly equated the term "double-barrelled" with the term "double-crossed."

In common parlance, the term "double-barrelled" means receiving a measure of something that is, perhaps in excess of that required. Nowhere does the term "double-crossed appear in the record. Rather, the existing record tends to show that when Jackson used the term "double-barrelled," he did so in the context of Pontiki's having received a citation for failure to maintain records of preshift/onshift conveyor belt examinations as well as a subsequent order of withdrawal for lack of evidence that the examinations had actually been made. There is nothing in the record affording a shred of support to the judge's innuendo of bribery.

C. Lax Enforcement

Throughout the body of his decision, the judge directly or indirectly stated that MSHA's inspection at the Pontiki Mine Number Two constituted lax enforcement. 6 FMSHRC at 782-86. The Secretary argues that the judge should have notified the parties of his intention to address this issue in the context of the citation and

orders. We agree. The issue of lax enforcement was not within the scope of the settlement agreement and the Secretary was not given an adequate opportunity to establish a record on this issue.

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We also conclude that a finding of lax enforcement does not necessarily follow from the pre-trial submissions made by the parties. It is true that during their February 28, 1983 spot inspection, the MSHA inspection team did not observe or cite all of the accumulations, equipment. and inspection violations that then existed at the mine. Other violations discovered by them were, however. cited on that date. Absent a hearing at which their explanatory testimony could have been taken. the judge's postulates of corruption or naivete hardly exhaust the universe of possible explanations, and amount to no more than personal, unsupported, damaging speculation.

D. Accusations of criminal conduct and defamatory comments

The judge's decision contains a number of statements that the Secretary argues are defamatory, derogatory, and inappropriate. While fair and supported criticism of MSHA or any other party appearing before the Commission at times may be appropriate, the judge overstepped proper bounds by stating or implying that the inspectors provided advance notice of an inspection intentionally ignored hazardous conditions, arranged some type of unethical or illegal deal with Pontiki, and received something in return for their willingness to accommodate the operator. .= our previous discussion indicates, these statements are not supported by the extant record.

We are particularly disturbed by the judge's allegations of advance notice and bribery. These are federal criminal offenses. As the Commission observed in another case involving unfounded criminal accusations by Judge Kennedy:

> Any accusation of criminal conduct is a grave matter, not to be undertaken lightly, especially by a jurist schooled in the law and aware of the requirements of due process.

Belcher Mines, Inc., 7 FMSHRC at 1019, 1022 (July 1985)(emphasis in original). In Belcher, the Commission held that by attacking the personal reputations of individuals and by accusing them of criminal activity:

> Judge Kennedy assumed the conflicting roles of grand jury, prosecutor, jury, and presiding judge. Jurisdiction over federal criminal matters resides with the United States Department of Justice and the federal criminal justice system. If Judge Kennedy had reason to believe that crimes had been committed, he should have referred the matter to the appropriate authorities at the Department of Justice.

7 FMSHRC at 1025.

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In this case, the Commission itself referred Judge Kennedy's allegations to the Department of Justice for further proceedings. The Department of Justice conducted a limited inquiry and ultimately concluded that further criminal investigation was not warranted. While the judge did not specifically name all of the individuals accused in his decision, the fact remains that in a rural, coal-mining region, the identity of the individuals concerned could readily be determined. In this regard, the Secretary has asked the Commission to take official notice of two front-page newspaper articles that appeared in the local press as a direct result of Judge Kennedy's written decision. We do so, and further note that the reports contain inaccurate statements misconstruing the statutory roles of the Commission and its administrative law judges and the limited scope of the record developed before Judge Kennedy in this proceeding. These press reports highlight the inexcusable damage that can be done to personal and professional reputations when criminal accusations are disseminated in public decisions. What makes such abuse especially egregious in this instance is the fact that Judge Kennedy's charges and criticism lack support in the record before him.

IV.

Conclusion

The foregoing is not to say that Commission judges do not possess considerable latitude to comment officially on relevant matters in the public record when the evidence before them and the circumstances warrant appropriate comment. The record in this case discloses that the cited violations were serious indeed. Pontiki's Mine Number Two is classified as a gassy mine, and the cited violative conditions were cause for grave concern. The Secretary initially proposed penalties totalling S2,294, which he was prepared to compromise to $1,900. In our view, either figure is inadequate under the circumstances, and the judge rightfully rejected them under section 110(k). We find that the $7,500 penalty settlement approved by the judge is supported by the record and is consistent with the statutory penalty criteria. Had the judge contented himself with assessing an appropriate penalty and had he limited his comments in doing so to the record developed before him, his duties under the Mine Act would have been discharged properly.

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Accordingly, we conclude that Judge Kennedy's objectionable comments discussed above lack record support and are unwarranted. As noted, the judge's allegations of unlawful activity were referred to the proper authorities, who concluded that prosecutorial action was unwarranted. We affirm the judge's settlement approval on the

narrow grounds on which it properly rests, and strike all but the first sentence of the last paragraph of his decision, which reads as follows: "Accordingly, it is ORDERED that the settlement approved at the prehearing/settlement conference of February 7, 1984, be, and hereby is CONFIRMED, and that the settlement amount agreed upon and paid, $7,500, be allocated equally among the four violations found." 5/

Richard V. Backley, Commissioner
Joyce A. Doyle, Commissioner
James A. Lastowka, Commissioner
L. Clair Nelson, Commissioner

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5/ Chairman Ford did not participate in the consideration or disposition of this matter.

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