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MSHA V. U.S STEEL MINING

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

v.
UNITED STATES STEEL
MINING COMPANY, INC.

Docket No. WEVA 86-371

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding involving U.S. Steel Mining Company, Inc. ("USSM"), arises under the Federal Mine Safety and Health Act of 1977. 30 U.S.C. § 801 et seq. (1982) (the "Mine Act" or "Act"). The issue is whether USSM's Winifrede Central Shop (the "Shop"), a facility for the repair and maintenance of electrical and mechanical coal mining equipment, is subject to the provisions of 30 C.F.R. § 77.1713(a), a mandatory safety standard requiring examinations of surface coal mines. 1/ Deciding the case on the basis of the parties' stipulations, Commission Administrative Law Judge Gary Melick held that the facility was covered by the standard and assessed a civil penalty of \$50.

1/ 30 C.F.R. § 77.1713(a) provides:

Daily inspection of surface coal mine; certified person; reports of inspection.

At least once during each working shift, or more often if necessary for safety, each active working area and each active surface installation shall be examined by a certified person designated by the operator to conduct such examinations for hazardous conditions and any hazardous conditions noted during such examinations shall be reported to the operator and shall be corrected by the operator.

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8 FMSHRC 1962 (December 1986)(ALJ). For the reasons set forth below, we affirm the judge's decision in result.

As noted, the parties stipulated to the relevant facts. USSM operates the Shop in Winifrede, West Virginia. The Shop's function is to repair and maintain electrical and mechanical equipment from

three of USSM's coal mining facilities: the No. 50 Surface Mine, the Morton Underground Mine, and the Winifrede Central Cleaning Plant. The Shop, which is composed of a one-story electrical shop building and a one-story automotive repair building, is located approximately eight and one-half miles from the No. 50 Surface mine; five miles from the Morton Mine; and one-half mile from the cleaning plant. Sixteen employees usually work at the Shop, during which time they are subject to the hazards inherent in moving heavy equipment, performing electrical work, and engaging in various grinding, cutting, sharpening, and welding tasks. In addition, work areas of the Shop contain flammable and caustic liquids. The Shop has USSM supervision separate from that of any of the other three facilities. The Shop also has a separate Department of Labor, Mine Safety and Health Administration ("MSHA") mine identification number. From March 3, 1984, until March 3, 1986, the Shop was cited by MSHA for twenty-one violations of mandatory surface coal mine standards under 30 C.F.R. Part 77.

On March 3, 1986, an MSHA inspector conducted an inspection of the Shop and found that examinations of the active working areas of the Shop had not been made during each working shift. The inspector issued to USSM a citation alleging a violation of section 77.1713(a). Subsequently, the Secretary petitioned this Commission for the assessment of a civil penalty. The parties agreed to waive a hearing and to submit the matter for decision on the basis of stipulated facts.

USSM did not dispute that the Shop's active working areas were not inspected during each working shift in accordance with section 77.1713(a). Rather, it argued that the Shop is an entity separate from and independent of the mining facilities that it services and that the standard is "not intended to apply to independent service facilities such as the Shop." USSM Br. 5. USSM cited an MSHA policy memorandum in effect when the citation was issued, providing that surface work areas of underground mines are exempt from the examination requirements of section 77.1713 and that the standard applies only to active working areas of surface mines, to active surface installations at surface mines, and to preparation plants not associated with underground mines. MSHA Policy Memorandum No. 85-46, "Application of 30 C.F.R. 77.1713," at 1-2 (April 8, 1985). 2/ USSM argued that the Shop does not fall into any of these categories. In response, the Secretary contended that the Shop is itself a surface coal mine and therefore subject to the standard. USSM Br. 4-5; Sec. Br. 2-5.

In his decision, the judge noted that the standard applies to "surface coal mine[s]," and that it "[m]ore specifically... applies to

2/ This policy memorandum expired on April 8, 1986. On January 27, 1987, it was reinstated as MSHA Policy Memorandum 87-IC.

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'each working area and each active surface installation [of such surface mines]'.⁸ FMSHRC at 1964. The judge observed that the Shop is "used to repair and maintain electrical and mechanical equipment from, among other places, the nearby (only 8.5 miles away) No. 50 Surface Coal Mine." He concluded that "it may reasonably be inferred that the ... Shop [is] an 'active surface installation' of the No. 50 Surface Coal Mine" and as such is subject to section 77.1713(a). *Id.* Therefore, the judge concluded that USSM had violated the cited standard.

On review, USSM argues that the standard is not intended to apply to independent service facilities such as the Shop. USSM argues that it is as logical to view the Shop as a surface facility of its nearby underground mine as it is to view it as a surface facility of its nearby surface mine. It contends that as such a surface facility of an underground mine, it is exempt from the examination requirements of section 77.1713(a) pursuant to the Secretary's policy memorandum. USSM asserts that the "plain intent" of the policy memorandum is that "the requirement for examinations not be extended to facilities not located at surface coal mines." *Petition for Discretionary Review 3.* (Emphasis in original). While the Secretary argues that the Shop could be deemed an active surface installation of the No. 50 Surface Coal Mine, the main thrust of the Secretary's contention on review is that the Shop itself is a surface coal mine subject to the examination requirements of the standard. *Sec. Br. 4-7, 7.9.*

Based on the stipulated facts, we agree with the Secretary that the Shop itself is a separate surface "coal mine" within the meaning of the Act and the cited standard and, as such, is subject to the cited standard's examination requirements. Because we conclude that the Shop itself is a surface "coal mine," there is no need to further consider whether the Shop is an "active surface installation" of other mines.

The applicable legal framework is clear. "Coal mine," is defined in relevant part as "lands ... structures, facilities, equipment, machines, tools, or other property ... on the surface ... used in, or to be used in ... the work of extracting [coal] from [its] natural deposits ... or the work of preparing coal."^{3/} This definition, while not

^{3/} Section 3(h)(1) of the Mine Act states:

"[C]oal ... mine means.... (A) an area of land from which minerals are extracted in nonliquid form or, if in liquid form, are extracted with workers

underground, (B) private ways and roads appurtenant to such area, and (C) lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property including impoundments, retention dams, and tailing ponds, on the surface or underground, used in, or to be used in, or resulting from, the work of extracting such minerals from their natural deposits in nonliquid form, or if in liquid form, with workers under

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without bounds, is expansive and is to be interpreted broadly. See, e.g., *Dilip K. Paul v. P.B. - K.B.B., Inc.*, 7 FMSHRC 1784, 1787-88 (November 1985), *aff'd sub nom. Dilip K. Paul v. FMSHRC*, 812 F.2d 717, 719-20 (D.C. Cir. 1987), cert. denied, U.S. , 107 S.C. 3269 (1987); *Oliver M. Elam*, 4 FMSHRC 5, 6 (January 1982). Part 77 contains mandatory safety standards applicable in relevant part to "surface coal mines" (30 C.F.R. § 77.1) and section 77.1713 requires inspection of surface coal mines at least once during each working shift. Here, the parties have stipulated that the Shop is a surface facility that exists and functions to repair and maintain electrical and mechanical equipment used in or to be used in USSM's underground and surface coal mines and its coal cleaning plant. The Shop has a separate federal mine identification number and has a history of regulation and citation by MSHA as a separate facility under Part 77. Stipulations 3, 4, 9; Exh. A. (USSM concedes that "the Shop is subject to inspections under the Act." Petition for Discretionary Review 2.) Given these stipulations regarding the nature of the Shop and its regulatory history, we hold that the Shop consists of "lands ... structures, facilities, equipment, machines, tools, or other property ... on the surface ... used in, or to be used in ... the work of extracting [coal] ... or the work of preparing coal" and, therefore, is a surface coal mine subject to the examination requirements of section 77.1713(a).

In light of this conclusion, it is unnecessary to further determine whether the judge correctly found that the shop is an "'active surface installation' of the No. 50 Surface Coal Mine." 8 FMSHRC at 1964. Further, it is unnecessary to gauge the effect, if any, of MSHA's policy memorandum upon the interpretation of section 77.1713.

ground, or used in, or to be used in, the milling of such minerals, or the work of preparing coal or other minerals, and includes custom coal preparation facilities....

30 U.S.C. §802(h)(1).

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Accordingly, we affirm in result the judge's conclusion that the provisions of section 77.1713(a) apply to the Shop. USSM has not otherwise challenged the judge's findings and conclusions.

Therefore, on the foregoing bases, we affirm the judge's decision.

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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