

CCASE:
MSHA V. SOUTHERN OHIO COAL
DDATE:
19880919
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 19, 1988

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

v.

Docket Nos. WEVA 86-190-R
WEVA 86-194-R

SOUTHERN OHIO COAL COMPANY

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

v.

WEVA 86-254

SOUTHERN OHIO COAL COMPANY

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

ORDER

BY THE COMMISSION:

At issue in this consolidated contest and civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) ("Mine Act"), was the validity of a notice to provide safeguard issued to Southern Ohio Coal Co. ("Socco") pursuant to 30 C.F.R. § 75.1403. On August 19, 1988, the Commission issued a decision holding that substantial evidence does not support the Administrative Law Judge's conclusion that the notice to provide safeguard was issued improperly. The Commission reversed the judge's vacation of the contested order, and remanded the matter to the judge to consider Socco's contest of the order's special findings and to assess an appropriate civil penalty. 10 FMSHRC

(August 19, 1988). On August 29, 1988, the Commission received from counsel for Socco a Motion to Alter or Amend Judgment. Socco moves the Commission to enter a new decision in Socco's favor or to remand the matter to the judge for the taking of further evidence.

We view Socco's motion as being in the nature of a motion for reconsideration. 29 C.F.R. § 2700.75. The Secretary has not filed a response to the motion.

The main thrust of Socco's request is that, under the Mine Act,

~1136

Commission review of an administrative law judge's decision is "limited to questions raised by the petition [for discretionary review]," 30 U.S.C. § 823(d)(2)(A)(iii). It asserts that the Commission has erred in deciding this case on a factual basis not raised in the Secretary's petition for discretionary review. We disagree with Socco's contention that the basis for our disposition was not within the proper scope of review. In her petition, the Secretary had expressly challenged, on evidentiary grounds, the judge's assertion that there was no basis for limiting the safeguard requirement at issue to the subject mine. S. PDR at 8. We agreed and that was the basis for our decision. Slip op. 5-6. As for Socco's other assertions as to why our decision should be reconsidered, we have reviewed them and find them unpersuasive.

Accordingly, Socco's motion is denied. 1/

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

1/ Socco correctly notes that Docket No. WEVA 86-194-R was not at issue on review and need not be subject to further proceedings on remand.

~1137

Distribution

David M. Cohen, Esq.
American Electric Power
Service Corporation
P.O. Box 700
Lancaster, Ohio 43130

Vicki Shteir-Dunn, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, VA 22203

Administrative Law Judge Roy Maurer
Federal Mine Safety & Health Review Commission
5203 Leesburg Pike, Suite 1000
Falls Church, Virginia 22041