

CCASE:
MSHA V. PENNSYLVANIA ELECTRIC
DDATE:
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TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 8, 1989

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

v. Docket Nos. PENN 88-227

PENNSYLVANIA ELECTRIC COMPANY

ORDER

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982) ("Mine Act" or "Act"), the Secretary of Labor has issued two citations to Pennsylvania Electric Company ("Penelec") alleging violations of 30 C.F.R. § 77.400(c) for failure to guard adequately the head drives of two conveyors at Penelec's Homer City Steam Electric Generating Station. Before Commission Administrative Law Judge Gary Melick, Penelec challenged whether the head drive equipment came within the jurisdiction of the Mine Act. The judge concluded that the Department of Labor's Mine Safety and Health Administration ("MSHA") had jurisdiction to inspect the head drives, found that the violations had occurred, and assessed Penelec civil penalties of \$54 for each violation. 10 FMSHRC 1780 (December 1988)(ALJ). The Commission granted Penelec's Petition for Discretionary Review. Penelec has subsequently filed an Application for Temporary Relief requesting, in effect, that the Commission enjoin MSHA from enforcement activities at the electrical generating station pending a decision in this case. Penelec has also filed a Motion for Expedited Hearing and Oral Argument. The Secretary has filed responses to Penelec's motions. On the following bases, the Application for Temporary Relief is denied and the Motion for Expedited Hearing and Oral Argument is granted.

Section 105(b)(2) of the Mine Act, 30 U.S.C. § 815(b)(2), defines the conditions under which temporary relief may be granted under the Mine Act. Commission Procedural Rules 45 and 46, 29 C.F.R. §§ 2700.45 & .46, merely implement this statutory provision. Section 105(b)(2) of the Act provides for temporary relief from "any modification or termination of any order or from any order issued under section [104]" of the Act, and specifically states that "[n]o temporary relief shall be granted in the case of a citation issued under subsection (a) ... of section [104]" of the Act. There are no orders of withdrawal involved in the present proceeding. Rather, the two citations in question were

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issued under section 104(a) of the Act. Thus, by the express terms of the Act, temporary relief may not be granted in this case.

Penelec also asserts that MSHA had agreed that, during the pendency of this civil penalty proceeding, it would restrict inspections of the generating station to previously inspected areas. Penelec further asserts that on March 27-30, 1989, MSHA violated that agreement by issuing 23 additional citations involving training requirements and equipment specifications at the station. Issuance of these additional citations has no bearing upon whether temporary relief may be granted in this case. Section 105(b)(2) of the Act and Commission Procedural Rules 45 and 46 contemplate that, prior to any grant of temporary relief, a proceeding be instituted before the Commission and a hearing held. The 23 additional citations are not the subject of the present proceeding and there is no indication in the record that Penelec has challenged them under the Act or that a hearing concerning these other citations has been held. Moreover, as already noted, temporary relief is not available for citations issued pursuant to section 104 of the Mine Act. Accordingly, Penelec's application for temporary relief is denied.

Upon consideration of Penelec's Motion for Expedited Hearing and Oral Argument and the Secretary's responses thereto, the motion is granted. An order setting the date and terms of oral argument will be issued at an appropriate time.

Ford B.Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

L. Clair Nelson, Commissioner

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